

TITLE VII
SPECIAL EDUCATIONCHAPTER 40
SPECIAL EDUCATION

[Prior to 9/7/88, see Public Instruction Department[670] Ch 12]

DIVISION I
SCOPE AND GENERAL PRINCIPLES

281—41.1(256B,34CFR300) Scope. These rules apply to the provision of education to children requiring special education between birth and the age of 21, and to a maximum allowable age in accord with Iowa Code section 256B.8, who are enrolled or are to be enrolled in the public or nonpublic schools of this state or in state-operated education programs. In addition, they apply to children requiring special education and who are being educated at home because they are receiving early childhood special education home instruction or are receiving special education home service as described in subrule 41.88(2), in hospitals or in facilities other than schools. The requirement to provide special education is mandated under 20 U.S.C. Chapter 33, Individuals with Disabilities Education Act; 34 CFR Part 300, Assistance to States for the Education of Children with Disabilities, July 1, 1994; and Iowa Code chapter 256B, “Special Education.” Under the provisions of 34 CFR §§300.2, 300.134 and 300.600, July 1, 1994, all agencies offering special education within this state shall comply with these rules.

281—41.2 Reserved.

281—41.3(256B) General principles.

41.3(1) Availability. Special education must be made available to all children requiring special education. For all persons referred to in rule 41.1(256B,34CFR300), required services include early identification; the development and implementation of an individualized education program (IEP); assessment of student improvement resulting from the provision of special services; and instructional services, support services, supplemental services, special adaptations, related services, assistive technology, transportation and materials and equipment necessary to providing children requiring special education a free appropriate public education.

41.3(2) Responsibility. It is the responsibility of each eligible individual’s resident local education agency (LEA) to provide or make provision for appropriate special education and related services to meet the requirements of state and federal statutes and rules. This responsibility may be met by one or more of the following: by each LEA acting for itself; by action of two or more LEAs through the establishment and maintenance of joint programs; by the area education agency (AEA); by contract for services from approved public or private agencies offering the appropriate special education and related services; or by any combination of these. The AEA shall support and assist LEAs in meeting their responsibilities in providing appropriate special education and related services. The requirements of 34 CFR Part 300, July 1, 1994, are binding on each public agency that has direct or delegated authority to provide special education and related services regardless of whether that agency is receiving funds under Part B.

41.3(3) Free appropriate public education. LEAs and AEAs shall provide special education and related services at public expense, under public supervision and direction, and at no cost to the parents. The special education and related services provided shall meet the standards set forth in these rules and in 20 U.S.C. §§1401 et seq., applicable portions of 29 U.S.C. §794, and 42 U.S.C. §§2116 et seq.; includes early childhood, elementary, and secondary education; and is provided in conformity with an individualized education program (IEP) or individualized family service plan (IFSP) that meets the requirements of division VIII.

41.3(4) Full educational opportunity. Each LEA shall ensure the provision of full educational opportunity to children requiring special education. Full educational opportunity includes the variety of educational programs and services and nonacademic and extracurricular services and activities that are available to individuals who do not require special education.

41.3(5) Least restrictive environment. Each agency shall ensure that, to the maximum extent appropriate, children requiring special education are educated with individuals who do not require special education and that special classes, separate schooling or removal of children requiring special education from the general education environment occurs only when the nature or severity of the individual's disability is such that education in regular classes with the use of special education and related services cannot be achieved satisfactorily in accord with division VI.

41.3(6) Appropriate program. Each child requiring special education shall be provided a specially designed education program that is based on the individual's specific educational needs. The development and provision of an appropriate program shall be consistent with divisions VI and VIII.

a. An appropriate program shall include all special education and related services that are necessary to address the individual's educational needs.

b. An appropriate program shall be consistent with applicable research findings and appropriate educational practices. In the absence of empirical evidence on the efficacy of any one intervention strategy, the LEA and AEA personnel and parent responsible for developing the individual's IEP shall outline a program of education which meets the educational needs of the individual.

c. An appropriate program shall not include practices which are precluded by statute or these rules.

d. The responsible agency shall provide special education and related services in accord with the individual's IEP; but the agency, teacher, or other person is not held accountable if an individual does not achieve the growth projected in the annual goals and objectives of the IEP.

41.3(7) Shared responsibility. General education and special education personnel share responsibility in providing appropriate educational programs for eligible individuals and in providing intervention and prevention services to individuals who are experiencing learning or adjustment problems.

41.3(8) Family involvement. LEAs and AEAs share responsibility in promoting partnerships to increase family involvement and participation in the social, emotional, and academic development of students receiving special education.

41.3(9) Maintenance of effort. These rules implement Iowa Code chapters 256B and 273 and 34 CFR Part 300, July 1, 1994, and are designed to ensure the continued provision of appropriate special education and related services to students with disabilities consistent with the mandate described in Iowa Code chapter 256B and the scope defined in rule 41.1(256B,34CFR300). Consistent with this intent, no provision of these rules should be construed as reducing the commitment to individuals requiring special education.

281—41.4 Reserved.

DIVISION II DEFINITIONS

281—41.5(256B,34CFR300) Definitions.

“Agency” is a public or nonpublic organization which offers special education and related services in one or more disability areas.

“Area education agency” or “AEA” is an intermediate educational unit created by Iowa Code chapter 273.

“Assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of eligible individuals.

“Assistive technology service” means any service that directly assists an eligible individual in the selection, acquisition, or use of an assistive technology device.

“At no cost” means that all special education and related services are provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the general education program.

“Autism” is a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before the age of three, that adversely affects an eligible individual’s educational performance. If a child manifests characteristics of the disability category “autism” after the age of three, that child still could be diagnosed as having “autism” if the criteria in this definition are satisfied. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if an eligible individual’s educational performance is adversely affected primarily because the eligible individual has a serious emotional disturbance.

“Behaviorally disordered” is the inclusive term for patterns of situationally inappropriate behavior which deviate substantially from behavior appropriate to one’s age and significantly interfere with the learning process, interpersonal relationships, or personal adjustment of the individual to such an extent as to constitute a behavioral disorder.

1. Clusters of behavior characteristic of eligible individuals who are behaviorally disordered include: Cluster I—Significantly deviant disruptive, aggressive or impulsive behaviors; Cluster II—Significantly deviant withdrawn or anxious behaviors; and Cluster III—Significantly deviant thought processes manifested with unusual communication or behavioral patterns or both. An eligible individual’s behavior pattern may fall into more than one of the above clusters.

2. The determination of significantly deviant behavior is the conclusion that the individual’s characteristic behavior is sufficiently distinct from that of the individual’s peer group to qualify the individual as requiring special education on the basis of a behavioral disorder. The behavior of concern shall be observed in the school setting for school-aged individuals and in the home or center-based setting for preschool-aged individuals. It must be determined that the behavioral disorder is not maintained by primary intellectual, sensory, cultural or health factors.

3. In addition to those data required within the full and individual evaluation for each individual, data which describe the qualitative nature, frequency, intensity, and duration of the behavior of concern shall be gathered when identifying an individual as behaviorally disordered. If it is determined that any of the areas of data collection are not relevant in assessing the behaviors of concern, documentation must be provided explaining the rationale for such a decision. Such documentation will be reviewed and maintained by the director.

(a) “Setting analysis data” is information gathered through informal observations, anecdotal record review and interviews describing the setting from which an individual was referred; documented prior attempts to modify the individual’s educational program so as to make behavioral and academic achievement possible in the current placement; and social functioning data that includes information, gathered from sources such as teacher interviews and sociometric measures, regarding the referred individual’s interaction with peers.

(b) “Individual behavioral data” are measures of actual behavior that include the specific recording, through systematic formal observations, of an individual’s behavior, including the frequency of behaviors of concern; and measures of reported behavior that include checklists or rating scales and interviews that document the perceptions of school personnel regarding the behavioral pattern of the referred individual and the perception of the individual’s home and school behavior obtained from the parent or surrogate parent.

(c) “Individual trait data” is information about the unique personal attributes of the individual. This information, gathered through interviews with the referred individual and teachers and relevant personality assessments, describes any distinctive patterns of behavior which characterize the individual’s personal feelings, attitudes, moods, perceptions, thought processes and significant personality traits.

“Board” means the Iowa state board of education.

“Children requiring special education” are those individuals handicapped in obtaining an education as specified in Iowa Code chapter 256B, as defined in these rules and referred to as an eligible individual.

“Children who are handicapped in obtaining an education” are those individuals with disabilities who are unable to receive educational benefit from the general education experience without the provision of special education and related services as defined in these rules. In these rules, they are referred to as an eligible individual.

“Communication disability” means a disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment that adversely affects an individual’s educational performance.

“Deaf-blindness” means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education and related services solely for individuals with deafness or individuals with blindness.

“Deafness,” a physical disability, means a hearing impairment that is so severe that the individual is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects an individual’s educational performance.

“Department” means the state department of education.

“Director” means the director of special education of the AEA.

“Director of education” means the state director of the department of education.

“Early childhood special education” or *“ECSE”* means special education and related services for those individuals below the age of six.

“Eligible individual” means an individual with a disability who is handicapped in obtaining an education and who is entitled to receive special education and related services. The term includes an individual who is over 6 and under 16 years of age who, pursuant to the statutes of this state, is required to receive a public education; an individual under 6 or over 16 years of age who, pursuant to the statutes of this state, is entitled to receive a public education; and an individual between the ages of 21 and 24 who, pursuant to the statutes of this state, is entitled to receive special education and related services. In federal usage, this refers to infants, toddlers, children and young adults.

“General education interventions” means attempts to resolve presenting problems or behaviors of concern in the general education environment prior to conducting a full and individual evaluation as described in subrule 41.48(2).

“Head injury” means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects an individual’s educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative or brain injuries induced by birth trauma.

“Hearing impairment,” a physical disability, means an impairment in hearing, whether permanent or fluctuating, that adversely affects an individual’s educational performance but that is not included under the definition of deafness in this division.

“IEP team” is the group of individuals specified in division VIII which develops the IEP for an eligible individual.

“Include” means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

“Individualized education program” or *“IEP”* is the written record of an eligible individual’s special education and related services developed in accord with division VIII.

“Individualized family service plan” or *“IFSP”* means a written plan for providing early intervention services to an individual eligible for such services under 34 CFR §303.340, July 1, 1994, and the individual’s family.

“Learning disability” means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term does not apply to individuals who have learning problems that are primarily the result of physical or mental disabilities, behavioral disorder, or environmental, cultural, or economic disadvantage.

“Local education agency” or *“LEA”* is the local school district.

“Mental disability” means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects an individual’s educational performance.

“Multicategorical” means special education in which the individuals receiving special education have different types of disabilities.

“Multidisciplinary team” is the team or group of persons that conducts the full and individual evaluation, including at least one teacher or other specialist with knowledge in the area of suspected disability. The team shall include individuals who are appropriately qualified to conduct and interpret evaluations in the areas to be assessed and who are knowledgeable about the individual, the AEA identification process, and service options. *“Qualified”* means that a person has met the licensure requirements identified in rule 41.8(256B,34CFR300).

“Multiple disabilities” means concomitant impairments (such as mental disabilities-blindness, mental disabilities-orthopedic impairments), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

“Native language,” when used with reference to an individual of limited English proficiency, means the language normally used by that individual or, in the case of a child, the language normally used by the parents of the child. In using the term, these rules do not prevent the following means of communication:

1. In all direct contact with a child, including evaluation of the child, communication would be in the language normally used by the child and not that of the parents, if there is a difference between the two.

2. For individuals with deafness or blindness, or for individuals with no written language, the mode of communication would be that normally used by the individual, such as sign language, braille, or oral communication.

“Orthopedic impairment,” a physical disability, means a severe orthopedic impairment that adversely affects an individual’s educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

“Other health impairment,” a physical disability, means having limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, that adversely affects an individual’s educational performance.

“Parent” means a parent, a guardian, a person acting as a parent of an individual, or a surrogate parent who has been appointed in accord with these rules. The term does not include the state if the child is a ward of the state. The term includes persons acting in the place of a parent, such as a grandmother or stepparent with whom an individual lives, as well as persons who are legally responsible for an individual’s welfare.

“Physical disability” is the inclusive term used in denoting deafness, hearing impairments, orthopedic impairments, other health impairments, and vision impairments including blindness of eligible individuals.

“Related services” means such developmental, corrective and other services as are required to assist an individual with a disability to benefit from special education.

“School district of the child’s residence” or *“district of residence of the child”* is that school district in which the parent of the individual resides, with the following statutory and legal interpretations:

1. When full and complete control of an eligible individual is transferred from a parent to others for the purpose of acquiring a home rather than to obtain a free education, the district of residence of the individual is the district in which the individual and those who have accepted full and complete control of the individual reside, and that district becomes responsible for providing and funding the special education and related services.

2. If full and complete control of an eligible individual is transferred by a parent to others who reside in another LEA for the purpose of obtaining an education, the district of residence remains with the parent; therefore, the parent must pay tuition to the receiving district. The district of residence cannot be held responsible for tuition payment.

3. "Children living in a foster care facility" are individuals requiring special education who are living in a licensed child foster care facility as defined in Iowa Code section 237.1 or in a facility providing residential treatment as defined in Iowa Code section 125.2. District of residence of an individual living in a foster care facility and financial responsibility for special education and related services is determined in accord with the provisions of subrule 41.132(5).

4. "Children placed by the district court" are pupils requiring special education for whom parental rights have been terminated and who have been placed in a facility or home by a district court. Financial responsibility for special education and related services of individuals placed by the district court is determined in accord with subrule 41.132(6).

"*Severely disabled*" are individuals with any severe disability including individuals who are profoundly multiply disabled.

"*Special education*" means specially designed instruction, at no cost to the parents, to meet the unique needs of an eligible individual. It includes the specially designed instruction conducted in schools, in the home, in hospitals and institutions, and in other settings; instruction in physical education; and includes vocational education if it consists of specially designed instruction. The term includes the services described in division IX if the services consist of specially designed instruction, at no cost to the parents, to meet the unique needs of an eligible individual, or are required to assist eligible individuals in taking advantage of, or responding to, educational programs and opportunities. Special education provides a continuum of services in order to provide the least restrictive intervention needed to meet the educational needs of each eligible individual regardless of the nature or severity of the educational needs.

"*Systematic progress monitoring*" means a systematic procedure for collecting and displaying an individual's performance over time for the purpose of making educational decisions.

"*Visual impairment including blindness*," a physical disability, means an impairment in vision that, even with correction, adversely affects an individual's educational performance. The term includes both partial sight and blindness. Individuals who have a medically diagnosed expectation of visual deterioration in adolescence or early adulthood may qualify for instruction in braille reading and writing.

"*Vocational education*" means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

281—41.6(256B,34CFR300) Acronyms. Selected acronyms frequently used in these rules:

"*AEA*" is the area education agency.

"*ECSE*" means early childhood special education.

"*FAPÉ*" means free appropriate public education.

"*IEP*" means individualized education program.

"*IFSP*" means individualized family service plan.

"*LEA*" is the local education agency (school district).

"*LRE*" means least restrictive environment.

281—41.7 Reserved.

DIVISION III
PERSONNEL

281—41.8(256B,34CFR300) Licensure (certification). Special education personnel shall meet the board of educational examiners' licensure (certification) and endorsement or recognition requirements for the position for which they are employed and as required for the particular discipline areas of special education. In addition, personnel providing special education and related services who do not hold board of educational examiners' licensure (certification) or other recognition required by its board, and who, by the nature of their work, are required to hold a professional or occupational license, certificate or permit in order to practice or perform the particular duties involved in this state shall be required to hold a license, certificate, or permit.

281—41.9(256B,273,34CFR300) Authorized personnel. An agency is authorized to employ the following types of special education personnel, as appropriate to the special education and related services provided:

41.9(1) *Director of special education.* The director, as required by Iowa Code section 273.5, shall function as an advocate for eligible individuals and assist the state bureau of special education in meeting the intent of the special education mandate and complying with statutes and rules. The director shall be responsible for the implementation of special education for eligible individuals pursuant to Iowa Code section 273.5 and these rules. The director shall be employed on a full-time basis and shall not be assigned the responsibility for any other administrative unit within the AEA. It shall be the responsibility of the director to report any violation of these rules to the department for appropriate action.

41.9(2) *Special education instructional personnel.* Special education instructional personnel serve as teachers or instructional assistants at the preschool, elementary or secondary levels for eligible individuals.

41.9(3) *Special education support personnel.* The following positions are those of special education support personnel who provide special education and related services as stated in each definition. These personnel work under the direction of the director and may provide identification, evaluation, remediation, consultation, systematic progress monitoring, continuing education and referral services in accord with appropriate licensure (certification) and endorsement or approval, or statement of professional recognition. They may also engage in data collection, applied research and program evaluation.

a. "*Assistant director of special education*" provides specific areawide administrative, supervisory and coordinating functions as delegated by the director.

b. "*Audiologist*" applies principles, methods and procedures for analysis of hearing functioning in order to plan, counsel, coordinate and provide intervention strategies and services for individuals with deafness or hearing impairments.

c. "*Consultant*" is the special education instructional specialist who provides ongoing support to special and general education instructional personnel delivering services to eligible individuals. The consultant participates in the identification process and program planning of eligible individuals as well as working to attain the least restrictive environment appropriate for each eligible individual. The consultant demonstrates instructional procedures, strategies, and techniques; assists in the development of curriculum and instructional materials; assists in transition planning; and provides assistance in classroom management and behavioral intervention.

d. "*Educational strategist*" provides assistance to general education classroom teachers in developing intervention strategies for individuals who are disabled in obtaining an education but can be accommodated in the general education classroom environment.

e. "*Itinerant teacher*" provides special education on an itinerant basis to eligible individuals.

f. “*Occupational therapist*” is a licensed health professional who applies principles, methods and procedures for analysis of, but not limited to, motor or sensorimotor functions to determine the educational significance of identified problem areas including fine motor manipulation, self-help, adaptive work skills, and play or leisure skills in order to provide planning, coordination, and implementation of intervention strategies and services for eligible individuals.

g. “*Physical therapist*” is a licensed health professional who applies principles, methods and procedures for analysis of motor or sensorimotor functioning to determine the educational significance of motor or sensorimotor problems within, but not limited to, areas such as mobility and positioning in order to provide planning, coordination, and the implementation of intervention strategies and services for eligible individuals.

h. “*School psychologist*” assists in the identification of needs regarding behavioral, social, emotional, educational and vocational functioning of individuals; analyzes and integrates information about behavior and conditions affecting learning; consults with school personnel and parents regarding planning, implementing and evaluating individual and group interventions; provides direct services through counseling with parents, individuals and families; and conducts applied research related to psychological and educational variables affecting learning.

i. “*School social worker*” enhances the educational programs of individuals by assisting in identification and assessment of individuals’ educational needs including social, emotional, behavioral and adaptive needs; provides intervention services including individual, group, parent and family counseling; provides consultation and planning; and serves as liaison among home, school and community.

j. “*Special education coordinator*” facilitates the provision of special education within a specific geographic area.

k. “*Special education media specialist*” is a media specialist who facilitates the provision of media services to eligible individuals; provides consultation regarding media and materials used to support special education and related services for eligible individuals; and aids in the effective use of media by special education personnel.

l. “*Special education nurse*” is a professional registered nurse who assesses, identifies and evaluates the health needs of eligible individuals; interprets for the family and educational personnel how health needs relate to individuals’ education; implements specific activities commensurate with the practice of professional nursing; and integrates health into the educational program.

m. “*Speech-language pathologist*” applies principles, methods and procedures for an analysis of speech and language comprehension and production to determine communicative competencies and provides intervention strategies and services related to speech and language development as well as disorders of language, voice, articulation and fluency.

n. “*Supervisor*” is the professional discipline specialist who provides for the development, maintenance, supervision, improvement and evaluation of professional practices and personnel within a specialty area.

o. “*Work experience coordinator*” plans and implements, with LEA personnel, sequential secondary programs which provide on- and off-campus work experience for individuals requiring specially designed career exploration and vocational preparation when they are not available through the general education curriculum.

p. “*Others (other special education support personnel)*” may be employed as approved by the department and board of educational examiners.

281—41.10(256B) Paraprofessionals.

41.10(1) Responsibilities. Special education assistants may be employed to provide assistance to professionals in special education and shall:

a. Complete appropriate preservice and continuing education specific to the functions to be performed. The agency shall make provisions for or require such completion prior to the beginning of service wherever practicable and within a reasonable time of the beginning of service where the preentry completion is not practicable.

b. Work under the supervision of professional personnel who are appropriately authorized to provide direct services in the same area where the paraprofessional provides assistive services.

c. Not serve as a substitute for appropriately authorized professional personnel.

41.10(2) Authorized special education assistants. Authorized special education paraprofessional personnel include:

a. “*Audiometrist*” provides hearing screening and other specific hearing-related activities as assigned by the audiologist.

b. “*Educational interpreter*” interprets or translates spoken language into sign language commensurate with the receiver’s language comprehension and interprets or translates sign language into spoken language.

c. “*Instructional assistants*” are educational aides for special education as described in 281—subrule 12.4(9).

d. “*Occupational therapy assistant*” is licensed to perform occupational therapy procedures and related tasks that have been selected and delegated by the supervising occupational therapist.

e. “*Physical therapist assistant*” is licensed to perform physical therapy procedures and related tasks that have been selected and delegated by the supervising physical therapist.

f. “*Psychology assistant*” collects screening data through records review, systematic behavior observations, standardized interviews, group and individual assessment techniques; implements psychological intervention plans; and maintains psychological records under supervision of the school psychologist.

g. “*Speech-language pathology assistant*” provides certain language, articulation, voice and fluency activities as assigned by the supervising speech-language pathologist.

h. “*Vision assistant*” provides materials in the appropriate medium for use by individuals with visual impairment including blindness and performs other duties as assigned by the supervising teacher of individuals with visual impairments.

i. “*Others*” as approved by the department.

281—41.11 Reserved.

DIVISION IV
RESPONSIBILITIES OF AGENCIES

281—41.12(256B,273,34CFR300) Responsibilities of all agencies. These provisions are applicable to each agency which provides special education and related services.

41.12(1) Provision of special education. It is the responsibility of each agency to provide each resident individual appropriate special education and related services except in those cases where it is not expressly otherwise provided by state statute. This responsibility may be fulfilled by using the services described in division IX of these rules.

41.12(2) Compliance with Federal Code. Each agency shall adhere to the provisions of and implementing regulations to 20 U.S.C. §§1401 et seq., applicable portions of 29 U.S.C. §794 pertaining to eligible individuals and Title 42 U.S.C. §§2116 et seq.

41.12(3) Evaluation and improvement. Each agency, in conjunction with other agencies, the department, or both, shall implement activities designed to evaluate and improve special education. These activities shall document the individual performance resulting from the provision of special education.

41.12(4) *Research.* Each agency shall cooperate in research activities designed to evaluate and improve special education when such activities are sponsored by an LEA, AEA or the department, or another agency when approved by the department to assess and ensure the effectiveness of efforts to educate all children with disabilities.

41.12(5) *Records and reports.* Each agency shall maintain sufficient records and reports for audit by the department. Records and reports shall include at a minimum:

a. Licensure (certification) and endorsements or recognition requirements for all special education personnel as per requirements described in rule 41.8(256B,34CFR300).

b. All IEP and IFSP meetings and three-year reevaluations for each eligible individual.

41.12(6) *Policies.* Policies related to the provision of special education and related services shall be developed by each agency and made available to the department upon request. Such policies shall include:

a. The provision of special education and related services pursuant to Iowa Code chapters 256B and 273 and these rules.

b. All requirements for protecting the confidentiality of personally identifiable information.

c. The graduation requirements for eligible individuals.

d. Requirements for administration of medications including a written medication administration record.

e. Special health services.

f. Transition from Part H to Part B, 41.75(256B,34CFR300,303) of these rules.

41.12(7) *Procedures.* Each agency shall develop written procedures pertinent to the provision of special education and related services and shall make such procedures available to the department upon request. At a minimum, such procedures shall include:

a. Procedures to ensure the provision of special education and related services pursuant to Iowa Code chapters 256B and 273 and these rules.

b. Procedures for protecting the confidentiality of personally identifiable information.

c. Procedures for the graduation of eligible individuals.

d. Procedures for administration of medications including a written medication administration record.

e. Procedures for providing special health services.

f. A plan which contains emergency disaster procedures as required in subrule 41.25(3).

g. Procedures for providing continuing education opportunities.

h. Each agency shall establish a procedure for its continued participation in the development of the eligible individual's IEP in out-of-state placements and shall outline a program to prepare for the eligible individual's transition back to the LEA before the eligible individual is placed out of state.

i. Procedures for transition from Part H to Part B, 41.75(256B,34CFR300,303) of these rules.

41.12(8) *Contracts.* Each agency contracting with other agencies to provide special education and related services for individuals or groups of individuals shall maintain responsibility for individuals receiving such special education and related services by:

a. Ensuring that all the requirements related to the development of each eligible individual's IEP are met.

b. Ensuring the adequacy and appropriateness of the special education and related services provided by requiring and reviewing periodic progress reports.

c. Conditioning payments on delivery of special education and related services in accord with the eligible individual's IEP and in compliance with these rules.

41.12(9) *Out-of-state placements.* When special education and related services appropriate to an eligible individual's needs are not available within the state, or when appropriate special education and related services in an adjoining state are nearer than the appropriate special education and related services in Iowa, the director may certify an eligible individual for appropriate special education and related services outside the state in accord with Iowa Code section 273.3 when it has been determined by the department that the special education and related services meet standards set forth in these rules.

41.12(10) *Department approval for out-of-state placement.* Contracts may be negotiated with out-of-state agencies, in accord with Iowa Code section 273.3(5), with department approval. The department will use the following procedures to determine if an out-of-state agency meets the rules of the board:

a. When requested to determine an agency's approval status, the department will contact the appropriate state education agency to determine if that state's rules are comparable to those of the board and whether the specified out-of-state agency meets those rules.

b. If the appropriate state education agency's rules are not comparable, the out-of-state agency will be contacted by the department to ascertain if its special education complies with the rules of the board.

41.12(11) *Medication administration.* Each agency shall establish medication administration policy and procedures which include the following:

a. A statement on administration of prescription and nonprescription medication.

b. A statement on an individual health plan, developed by the licensed health personnel with the individual and the individual's parent, when administration requires ongoing professional health judgment.

c. A statement that persons administering medication shall include licensed registered nurses, physicians and persons who have successfully completed a medication administration course reviewed by the board of pharmacy examiners. Individuals who have demonstrated competency in administering their own medications may self-administer their medication.

d. Provision for a medication administration course and periodic update. A registered nurse or licensed pharmacist shall conduct the course. A record of course completion shall be maintained by the school.

e. A requirement that the individual's parent provide a signed and dated written statement requesting medication administration at school.

f. A statement that medication shall be in the original labeled container either as dispensed or in the manufacturer's container.

g. A written medication administration record shall be on file at school including:

- (1) Date.
- (2) Individual's name.
- (3) Prescriber or person authorizing administration.
- (4) Medication.
- (5) Medication dosage.
- (6) Administration time.
- (7) Administration method.
- (8) Signature and title of the person administering medication.
- (9) Any unusual circumstances, actions or omissions.

h. A statement that medication shall be stored in a secured area unless an alternate provision is documented.

i. A requirement for a written statement by the individual's parent or guardian requesting individual coadministration of medication, when competency is demonstrated.

j. A requirement for emergency protocols for medication-related reactions.

k. A statement regarding confidentiality of information.

281—41.13 and 41.14 Reserved.

281—41.15(256B,34CFR300) LEA responsibilities. In addition to the requirements of rule 41.12(256B,273,34CFR300), the following provisions are applicable to each LEA which provides special education and related services.

41.15(1) Policies. Each LEA shall develop written policies pertinent to the provision of special education and related services, and shall make such policies available to the department upon request. At a minimum, such policies shall include those identified in subrule 41.12(6).

41.15(2) Procedures. Each LEA shall develop written procedures pertinent to the provision of special education and related services, and shall make such procedures available to the department upon request. At a minimum, such procedures shall include those identified in subrule 41.12(7).

41.15(3) Plans. Districtwide plans required by the department or federal programs and regulations shall address eligible individuals and describe the relationship to or involvement of special education services.

41.15(4) Nonpublic schools. Each LEA shall provide special education and related services designed to meet the needs of nonpublic school students with disabilities residing in the jurisdiction of the agency in accord with Iowa Code sections 256.12(2) and 273.2.

41.15(5) Comprehensive system of personnel development (CSPD). The LEA, in conjunction with the AEA, the department, or both, shall assist with the procedures and activities described in rule 41.20(256B,34CFR300) to ensure an adequate supply of qualified personnel as defined in board of educational examiners 282—Chapters 14 and 15, including special education and related services personnel and leadership personnel.

281—41.16 and 41.17 Reserved.

281—41.18(256B,273,34CFR300) AEA responsibilities. In addition to the requirements of rule 41.12(256B,273,34CFR300), the following provisions are applicable to each AEA which provides special education and related services.

41.18(1) Policies. Each AEA shall develop written policies pertinent to the provision of special education and related services, and shall make such policies available to the department upon request. At a minimum, such policies shall include those identified in subrule 41.12(6) and the following:

- a. Appointment of surrogate parents, rule 41.110 (256B,34CFR300).
- b. Provision of and payment for independent educational evaluation, rule 41.109(256B,34CFR300).

41.18(2) Procedures. Each AEA shall develop written procedures pertinent to the provision of special education and related services, and shall make such procedures available to the department upon request. At a minimum, such procedures shall include those identified in subrule 41.12(7) and the following:

- a. Appointment of surrogate parents, rule 41.110 (256B,34CFR300).
- b. Provision of and payment for independent educational evaluation, rule 41.109(256B,34CFR300).

41.18(3) Responsibility for provision of special education. AEAs contracting with LEAs or other agencies to provide special education and related services for eligible individuals or groups of eligible individuals shall maintain responsibility for the provision of such special education and related services by:

- a. Ensuring that all the requirements of special education related to the development of each eligible individual's IEP or IFSP are met.
- b. Ensuring the adequacy and appropriateness of the special education and related services provided by requiring and reviewing periodic progress reports.
- c. Conditioning payments on the delivery of special education and related services in accord with each eligible individual's IEP or IFSP and in compliance with these rules.

41.18(4) Responsibility for monitoring of compliance. The AEA shall conduct activities in each constituent LEA at least once every three years to monitor compliance with the provisions of all applicable federal and state statutes and regulations and rules applicable to the education of eligible individuals. A written report describing the monitoring activities, findings, corrective action plans, follow-up activities, and timelines shall be developed and made available for review by the department upon request. Monitoring of compliance activities shall meet all requirements of division XIV in these rules.

41.18(5) *AEA reports.* Each AEA shall provide the department with such data as are necessary to fulfill federal and state reporting requirements under the provisions of 20 U.S.C. §§1400 et seq. Data shall be provided in the format specified or on forms provided by the department and within timelines established by the department.

281—41.19 Reserved.

281—41.20(256B,34CFR300) Comprehensive system of personnel development (CSPD). The AEA shall assist the department in the development and implementation of a comprehensive system of personnel development.

41.20(1) *Adequate supply of qualified personnel.* Each AEA plan shall include a description of the procedures and activities the AEA will undertake to ensure an adequate supply of qualified personnel as defined in board of educational examiners 282—Chapters 14 and 15, including special education and related services personnel and leadership personnel. The procedures and activities shall include the development, updating, and implementation of a plan that:

a. Addresses current and projected special education and related services personnel needs, including the need for leadership personnel; and

b. Coordinates and facilitates efforts among the AEAs and LEAs, institutions of higher education, and professional associations to recruit, prepare, and retain qualified personnel, including personnel from minority backgrounds and personnel with disabilities.

41.20(2) *Personnel preparation and continuing education.* Each AEA plan shall include a description of the procedures and activities the AEA will undertake to ensure that all personnel necessary to carry out the requirements of these rules are appropriately and adequately prepared. The procedures and activities shall include:

a. A system for the continuing education of general and special education and related services personnel to enable these personnel to meet the needs of eligible individuals.

b. Procedures for acquiring and disseminating to teachers, administrators, and related services personnel significant knowledge derived from education research and other sources.

c. Procedures for adopting promising practices, materials, and technology when proven effective through research and demonstration.

41.20(3) *Data system on qualified personnel.* The procedures and activities required to ensure an adequate supply of qualified personnel shall include the development and maintenance of a system for determining, on an annual basis:

a. The number and type of personnel, including leadership personnel, employed in the provision of special education and related services, by profession or discipline;

b. The number and type of personnel who are employed with emergency or conditional licensure (certification) in each profession or discipline who do not hold appropriate state certification, licensure or other credentials comparable to certification or licensure for that profession or discipline; and

c. The number and type of personnel, including leadership personnel, in each profession or discipline needed, and a projection of the numbers of those personnel that will be needed in five years, based on projections of individuals to be served, retirement and other departures of personnel from the field, and other relevant factors.

d. The data on special education and related services personnel required in this division shall include audiologists, consultants, counselors, diagnostic and evaluation personnel, educational strategists, itinerant teachers, educational interpreters, occupational therapists, physical education teachers, physical therapists, school psychologists, rehabilitation counselors, school social workers, special education media specialists, special education nurses, speech-language pathologists, paraprofessionals, recreation and therapeutic recreation specialists, vocational education teachers, work experience coordinators, and other instructional and noninstructional personnel.

e. The data on leadership personnel required in this division shall include administrators and supervisors of AEAs or LEAs who are involved in the provision or supervision of services or activities necessary to carry out the purposes of these rules.

281—41.21 Reserved.

281—41.22(256B,273,34CFR300) AEA plan and application.

41.22(1) AEA plan. Each AEA shall submit to the department a plan for the provision of comprehensive special education and related services for eligible individuals within the AEA. The plan shall be developed with input from parents, teachers, LEA administrators, AEA support personnel, and the general public. The plan shall be reviewed annually with necessary amendments submitted to the department for approval. Prior to submitting the plan to the department, the AEA shall provide an opportunity for comment on the plan by the general public. The AEA shall provide notice to the general public of the opportunity for public comment allowing sufficient time for the public to comment. The AEA plan shall describe the process used to make the plan available for public comment and how the comment was considered. The plan shall include:

a. A description of procedures for monitoring the caseloads of LEA and AEA special education personnel to ensure that the IEPs of eligible individuals are able to be fully implemented. The description shall include the procedures for timely and effective resolution of concerns about caseloads and paraprofessional assistance which have not been resolved satisfactorily pursuant to subparagraph 41.84(2)“b”(3).

b. A description of procedures for evaluating the effectiveness of services in meeting the needs of eligible individuals in order to receive federal assistance under 34 CFR §300.240, July 1, 1994.

c. A description of proactive steps to inform and educate parents, AEA and LEA staff regarding eligibility, identification criteria and process, and due process steps to be followed when parents disagree regarding eligibility.

d. A description concerning the following:

(1) Child find policy, including a description of the identification process as required in division VII of these rules and the manner in which the AEA system uses categorical designations. While AEAs may identify students as eligible for special education without designating a specific disability category, it is recognized that in certain circumstances the educational diagnosis of a specific disability, such as autism or sensory impairment, may enhance the development and ongoing provision of an appropriate educational program.

(2) Policy on confidentiality of personally identifiable information.

(3) Full educational opportunity goal with a detailed timetable.

(4) Kind and number of facilities, personnel and services to meet the goal of full educational opportunity.

(5) Implementation and use of the comprehensive system of personnel development.

(6) Priorities for services to eligible individuals as established by the department on an annual basis.

(7) Efforts to ensure that the agency makes provision for participation of and consultation with parents or guardians of children with disabilities.

(8) How children with disabilities are involved with nondisabled children in educational programs including a description of alternative placements.

(9) Efforts to ensure compliance with the procedures and content requirements of IEPs.

(10) Information related to students enrolled in nonpublic schools as required by 34 CFR §76.656, July 1, 1994.

e. A description of how the AEA identification process and LEA delivery systems for instructional services will be coordinated.

41.22(2) Plan cycle. In order to provide a three-year approval cycle, within 12 months after the effective date of these rules, each AEA will submit a plan for the period July 1 through June 30, according to monitoring of compliance and this schedule:

a. Five AEAs, identified by the department, will submit a plan for a one-year period and for a three-year period every three years thereafter.

b. Five AEAs, identified by the department, will submit a plan for a two-year period and for a three-year period every three years thereafter.

c. Five AEAs, identified by the department, will submit a plan for a three-year period and for a three-year period every three years thereafter.

41.22(3) AEA application. Each AEA shall submit to the department, 45 days prior to the start of the project year, an application for federal funds under 20 U.S.C. Chapter 33, and 34 CFR Part 300, July 1, 1994. An AEA application shall only receive department approval when there is an approved AEA plan on file at the department.

The application, on forms provided by the department, shall include the following:

- a. General information.
- b. Utilization of funds.
- c. Assurances.

41.22(4) Approval of AEA plan or application. Final approval of an AEA plan or application will be granted by the department in accordance with 34 CFR §§300.193 and 300.194, July 1, 1994. The department will notify the AEA in writing of the recommendation to the board for approval or disapproval of the AEA plan or application and the date of the meeting that the board will consider the recommendation. If approval is denied, the written notice shall contain a statement of the reasons for disapproval. A plan or application may be approved in part or subject to the remedying of deficiencies or omissions.

41.22(5) Disapproval of an AEA plan or application—opportunity for a hearing. The following are the procedures of the department in providing for a hearing in the event a plan or application would be recommended for disapproval.

a. Within 30 days of the receipt of the recommendation for intended action from the bureau of special education, the applicant agency shall make a request to the director of the department for a hearing.

b. Within 30 days after receiving a request, the director shall hold a hearing on the record and shall review the application.

c. No later than 10 days after the hearing the director shall issue a written ruling, including findings of fact and reasons for the ruling.

d. If the director determines that the department's recommendation is contrary to state or federal statutes or regulations that govern the applicable program, the department shall rescind its action.

e. If the department does not rescind its final action after a review, the applicant agency may appeal to the U.S. Secretary of Education pursuant to procedures found at 34 CFR §76.401.

f. The department will make available at reasonable times and places to each applicant all records of the agency pertaining to any review or appeal the applicant is conducting under this rule, including records of other applicants.

281—41.23(256B) Special school provisions.

41.23(1) Providers. Special schools for eligible individuals who require special education outside the general education setting may be maintained by individual LEAs; jointly by two or more LEAs; by the AEA; jointly by two or more AEAs; by the state directly; or by approved private providers.

41.23(2) Department recognition. Department recognition of agencies providing special education and related services shall be of two types:

a. Recognition of nonpublic agencies and state-operated programs providing special education and related services in compliance with these rules.

b. Approval for the nonpublic agency to provide special education and related services, and to receive special education funds for the special education and related services contracted for by an LEA or an AEA.

281—41.24(256B,34CFR300) Length of school day. The length of the school day for eligible individuals shall be the same as that determined by the LEA board for all other individuals unless a shorter day is prescribed in the eligible individual's IEP.

281—41.25(256B,34CFR76,104,300) Facilities.

41.25(1) *Equivalent to general education.* Each agency providing special education and related services shall supply facilities which shall be at least equivalent in quality to general education classrooms in the system, located in buildings housing regularly enrolled individuals of comparable ages, and readily accessible to individuals with disabilities pursuant to 34 CFR §104.21. No eligible individual shall be denied the benefits of, or be excluded from participation in, or otherwise be subjected to discrimination under any program activity because an agency's facilities are inaccessible.

41.25(2) *Personnel space and assistance.* Each agency providing special education shall ensure that special education personnel are provided adequate access to telephone service and clerical assistance, and sufficient and appropriate work space regularly available for their use which is readily accessible to individuals with disabilities pursuant to 34 CFR Part 104.

41.25(3) *Plan for emergencies.* Each facility serving eligible individuals shall develop and maintain a written plan containing emergency and disaster procedures which will be clearly communicated to and periodically reviewed with personnel responsible for such individuals. The emergency plan shall include:

- a. Plans for the assignment of personnel to specific tasks and responsibilities.
- b. Instructions relating to the use of alarm systems and signals. If combination visual and auditory warning devices do not exist, the plan shall include specific provisions for warning individuals with hearing impairments and deafness.
- c. Information concerning methods of fire containment.
- d. Systems for notification of appropriate persons and agencies.
- e. Information concerning the location and use of firefighting equipment.
- f. Specification of evacuation routes and procedures.
- g. Posting of plans and procedures at suitable locations throughout the facility.
- h. Evacuation drills held as required in Iowa Code section 100.31. Evacuation drills shall include actual evacuation of individuals to safe areas.
- i. An evaluation for each evacuation drill.

281—41.26(256B) Materials, equipment and assistive technology.

41.26(1) *Provision for materials, equipment, and assistive technology.* Each LEA shall make provision for special education and related services, facility modifications, assistive technology, necessary equipment and materials, including both durable items and expendable supplies; provided that, where an AEA, pursuant to appropriate arrangements authorized by the Iowa Code, furnishes special education and related services, performance by the AEA shall be accepted in lieu of performance by the LEA.

41.26(2) *Acquire and maintain equipment.* Each agency providing special education and related services shall have a comprehensive program in operation under which equipment for special education is acquired, inventoried, maintained, calibrated and replaced on a planned and regular basis.

41.26(3) *Provide special equipment.* The agency responsible for the provision of special education and related services shall provide assistive technology, special aids, equipment, materials or supplies as necessary.

41.26(4) *Functioning of hearing aids.* Each agency shall develop and implement a plan to ensure that the hearing aids worn by individuals with hearing impairments (including deafness) in school are functioning properly.

281—41.27(256B) Rules exceptions.

41.27(1) *Department approval.* In unique circumstances, the director or, in a state-operated program, the superintendent or designee may request a rule exception from the department.

- a. Requests must be filed with the department, on forms provided, and approval granted prior to the intended action. Department action on a request for a rule exception shall be communicated in writing to the director or, in a state-operated program, the superintendent and, if granted, such an exception shall be valid for that academic year.

b. The department will use the following criteria in the review and approval of all requests for a rule exception. The request:

(1) Does not ask for a waiver of any of the requirements of 20 U.S.C. Chapter 33, 34 CFR Part 300, July 1, 1994, or divisions I, V, VI, VIII, X, and XI of these rules.

(2) Is necessary to provide an appropriate education to an eligible individual or group of eligible individuals, or is designed to improve the requesting agency's delivery of services.

(3) Is supported by substantive evidence indicating the need and rationale for the request.

41.27(2) *Adjusted program reports.* The director or, in a state-operated program, the superintendent or designee, may grant an adjusted program status when an LEA or state-operated program uses the program models described in subrule 41.84(1). An adjusted program report, on forms provided by the department, shall document such action and shall be maintained by the director or superintendent. The adjusted program status shall be approved by the director or superintendent within 30 days of the action, shall be valid for that academic year, and shall be used for the following circumstances:

a. Program model: An individual is appropriately served in a program other than that typically provided for individuals with similar educational needs.

b. Disability: An individual is appropriately served in a categorical program that does not typically serve the individual's disability.

c. Age span: The chronological age span of the individuals within the program exceeds six years in a self-contained special class or four years in a multicategorical special class with integration.

d. Maximum class size: When class size, including the size of a class served by a teacher employed less than full-time, exceeds those limits specified in subrules 41.84(1) and 41.84(2).

281—41.28 Reserved.

DIVISION V CONFIDENTIALITY OF INFORMATION

281—41.29(256B,34CFR99,300) Definitions. As used in this division:

"Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

"Education records" means the type of records covered under the definition of education records in 34 CFR Part 99, July 1, 1994.

"Personally identifiable information" means that information includes:

1. The name of the child, the child's parent, or other family member;
2. The address of the child;
3. A personal identifier, such as the child's social security number or student number; or
4. A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

281—41.30(256B,34CFR99,300) Information recorded and confidentiality maintained. For each individual all screening, assessment and evaluation results shall be recorded. Educational records shall be confidential and shall not be disclosed except pursuant to 34 CFR Parts 99 and 300, July 1, 1994. Each agency shall maintain records and reports in a current status. The parents of an eligible individual and the eligible individual shall be afforded, in accordance with rules 41.31(256B,34CFR99,300) and 41.33(256B,34CFR99,300), an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the individual; and the provision of FAPE to the individual.

281—41.31(256B,34CFR99,300) Access to educational records.

41.31(1) *Reviewing records.* Each agency shall permit the parents of an eligible individual and the eligible individual to inspect and review any education records relating to the individual that are collected, maintained, or used by the agency under these rules. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement of the individual or the provision of FAPE to the individual and in no case more than 45 days. An agency may presume that the parent of an eligible individual has authority to inspect and review records relating to the individual unless the agency has been advised that the parent does not have the authority under Iowa Code chapters 597, 598, and 598A governing such matters as guardianship, separation, and divorce. The right to inspect and review education records under these rules includes:

- a.* The right to a response from the agency to reasonable requests for explanations and interpretations of the records.
- b.* The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records.
- c.* The right to have a representative of the parent inspect and review the records.

41.31(2) *Record of access.* Each agency shall keep a record of parties obtaining access to education records collected, maintained, or used under these rules (except access by parents and authorized employees of the agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

41.31(3) *Records on more than one individual.* If any education record includes information on more than one individual, the parents of those individuals shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

41.31(4) *List of types and locations of information.* Each agency shall provide to parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

41.31(5) *Fees.* Each agency may charge a fee for copies of records that are made for parents under these rules if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. An agency may not charge a fee to search for or to retrieve information under these rules.

41.31(6) *Consent.*

a. Parental consent must be obtained before personally identifiable information is disclosed to anyone other than officials of agencies collecting or using the information under these rules, subject to paragraph “b” of this subrule, or used for any purpose other than meeting a requirement of these rules.

b. An educational agency or institution subject to 34 CFR Part 99, July 1, 1994, may not release information from education records to agencies without parental consent unless authorized to do so under 34 CFR Part 99, July 1, 1994.

41.31(7) *Safeguards.*

a. Each agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

b. One official at each agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

c. All persons collecting or using personally identifiable information must receive training or instruction regarding the state’s policies and procedures under these rules and 34 CFR Part 99, July 1, 1994.

d. Each agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

281—41.32 Reserved.

281—41.33(256B,34CFR99,300) Amendment of educational records. A parent who believes that information in the education records collected, maintained or used under these rules is inaccurate or misleading or violates the privacy or other rights of the individual may request the agency that maintains the information to amend the information. The agency shall decide whether to amend the information in accord with the request within a reasonable period of time of receipt of the request. If the agency decides to refuse to amend the information in accord with the request, it shall inform the parent of the refusal, and advise the parent of the right to a hearing under 41.33(1).

41.33(1) Opportunity for a hearing. The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the individual.

41.33(2) Hearing procedure. A hearing held under 41.33(1) must be conducted according to the procedures under 34 CFR §99.22, July 1, 1994.

41.33(3) Result of hearing. If, as a result of the hearing, the agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the individual, it shall amend the information accordingly and so inform the parent in writing. If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy of the other rights of the individual, it shall inform the parent of the right to place in the records it maintains on the individual a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency. Any explanation placed in the records of the individual under this rule must:

a. Be maintained by the agency as part of the records of the individual as long as the record or contested portion is maintained by the agency; and

b. If the records of the individual or the contested portion is disclosed by the agency to any party, the explanation must be disclosed to the party.

281—41.34 Reserved.

281—41.35(256B,34CFR76,99,300) Destruction of information. The agency shall inform parents when personally identifiable information collected, maintained or used under these rules is no longer needed to provide educational services to the eligible individual. The information must be destroyed at the request of the parents. Agencies are required to retain records for five years. Personally identifiable information can be removed from those records less than five years old when the parents request destruction of records. A permanent record of the individual's name, address, and telephone number, the individual's grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation. When parents request destruction of information the agency shall inform parents that the records may be needed by the individual or the parents for social security benefits or other purposes.

281—41.36 Reserved.

DIVISION VI
LEAST RESTRICTIVE ENVIRONMENT

281—41.37(256B,34CFR300) General.

41.37(1) General education environment. The general education environment includes, but is not limited to, the classes, classrooms, services, and nonacademic and extracurricular services and activities made available by an agency to all students. For preschool children who require special education, the general education environment is the setting where activities, instruction, and remediation naturally occur for children of similar age without disabilities.

41.37(2) Documentation. Each agency shall ensure and maintain adequate documentation:

a. That to the maximum extent appropriate, eligible individuals, including eligible individuals in public or private institutions or other care facilities, are educated with individuals who are nondisabled.

b. That special classes, separate schooling or other removal of eligible individuals from the general education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever possible, hindrances to learning and to the normal functioning of eligible individuals within the general school environment shall be overcome by the provision of special aids and services rather than by separate programs for those in need of special education.

281—41.38(256B,34CFR300) Continuum of services. Each agency shall ensure that a continuum of services is available to meet the needs of eligible individuals for special education and related services. The continuum of services shall include services listed in division IX of these rules.

281—41.39(256B,34CFR300) Services. Each agency shall ensure that:

41.39(1) Annual determination. The services for each eligible individual are determined at least annually; are based on the individual's IEP; and are provided as close as possible to the individual's home.

41.39(2) Alternative placements. The various services included in division IX are available to the extent necessary to implement the IEP for each eligible individual.

41.39(3) Location. Unless the IEP of an eligible individual requires some other arrangement, the individual is educated in the school that the individual would attend if nondisabled. IEP teams are required to consider the questions on LRE presented in subrule 41.70(2).

41.39(4) Harmful effect. In selecting the LRE, consideration is given to any potential harmful effect on the eligible individual or on the quality of services that the individual needs.

281—41.40(256B,34CFR300) Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities, each agency shall ensure that each eligible individual participates with nondisabled individuals in those services and activities to the maximum extent appropriate to the needs of that individual. Those services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the agency, referrals to agencies which provide assistance to persons with disabilities, and employment of students, including both employment by the agency and assistance in making outside employment available.

281—41.41(256B,34CFR300) Individuals in public or private institutions. The department, on behalf of LEAs and AEAs, shall make arrangements with public and private institutions as may be necessary to ensure that this division is effectively implemented.

281—41.42(256B) Special schools. When an eligible individual's special education is provided in a special school, the individual's IEP shall include specific answers to the following questions:

41.42(1) Reasons. What are the reasons that the eligible individual cannot be provided an educational program in an integrated school setting?

41.42(2) Support needed. What supplementary aids and services are needed to support the eligible individual in the special education program?

41.42(3) Integrated setting. Why can't these aids and services be provided in an integrated setting?

41.42(4) Continuum of services available. What is the continuum of services available for the eligible individual?

281—41.43(256B,34CFR300) Technical assistance and training activities. The department shall carry out activities to ensure that teachers and administrators in all agencies are fully informed about their responsibilities for implementing rule 41.37(256B,34CFR300) and are provided with technical assistance and training necessary to assist them in this effort.

281—41.44(256B,34CFR300) Monitoring activities. The department shall carry out activities to ensure that rule 41.37(256B,34CFR300) is implemented by each public agency (state-operated program, AEA, and LEA). If there is evidence that an agency makes placements that are inconsistent with rule 41.37(256B,34CFR300), the department shall review the agency's justification for its actions and assist the agency in planning and implementing any necessary corrective action. The department shall take action consistent with rule 41.135(256B,273,282) if an agency fails to implement corrective actions.

281—41.45 and 41.46 Reserved.

DIVISION VII
IDENTIFICATION

281—41.47(256B,34CFR300) Identification of eligible individuals.

41.47(1) Definition. As used in this division, identification has two purposes: (1) to identify those individuals who require special education and (2) to identify individuals who need general education interventions as described in subrule 41.48(2).

41.47(2) Procedures. Each AEA, in conjunction with each constituent LEA, shall establish and maintain ongoing identification and evaluation procedures to ensure early identification of and appropriate special education for eligible individuals of all ages, including individuals in all public and private agencies and institutions within that jurisdiction, as specified in rule 41.1(256B,34CFR300) of these rules. Each AEA shall have written procedures for the identification process.

41.47(3) Systematic problem solving process. When used by an AEA in its identification process, systematic problem solving means a set of procedures that is used to examine the nature and severity of an educationally related problem. These procedures primarily focus on variables related to developing effective educationally related interventions. Active parent participation is an integral aspect of the process and is solicited throughout. At a minimum, the process includes:

a. Description of problem. The presenting problem or behavior of concern is described in objective, measurable terms that focus on alterable characteristics of the individual and the environment. The individual and environment are examined through systematic data collection. The presenting problem or behaviors of concern are defined in a problem statement that describes the degree of discrepancy between the demands of the educational setting and the individual's performance.

b. Data collection and problem analysis. A systematic, data-based process for examining all that is known about the presenting problem or behaviors of concern is used to identify interventions that have a high likelihood of success. Data collected on the presenting problem or behaviors of concern are used to plan and monitor interventions. Data collected are relevant to the presenting problem or behaviors of concern and are collected in multiple settings using multiple sources of information and multiple data collection methods. Data collection procedures are individually tailored, valid, and reliable, and allow for frequent and repeated measurement of intervention effectiveness.

c. Intervention design and implementation. Interventions are designed based on the preceding analysis, the defined problem, parent input, and professional judgments about the potential effectiveness of interventions. The interventions are described in an intervention plan that includes goals and strategies; a progress monitoring plan; a decision-making plan for summarizing and analyzing progress monitoring data; and responsible parties. Interventions are implemented as developed and modified on the basis of objective data and with the agreement of the responsible parties.

d. Progress monitoring. Systematic progress monitoring is conducted which includes regular and frequent data collection, analysis of individual performance across time, and modification of interventions as frequently as necessary based on systematic progress monitoring data.

e. Evaluation of intervention effects. The effectiveness of interventions are evaluated through a systematic procedure in which patterns of individual performance are analyzed and summarized. Decisions regarding the effectiveness of interventions focus on comparisons with initial levels of performance.

281—41.48(256B,34CFR300) Identification process. Each AEA shall develop and use an identification process that, at a minimum, includes the following activities and procedures. The AEA shall maintain adequate records of the results of the identification process.

41.48(1) Interactions. The identification process shall include interactions with the individual, the individual's parents, school personnel, and others having specific responsibilities for or knowledge of the individual. Active parent participation is solicited throughout the process. Parents are communicated with directly and are encouraged to participate at all decision points.

41.48(2) General education interventions. Each LEA, in conjunction with the AEA, shall attempt to resolve the presenting problem or behaviors of concern in the general education environment prior to conducting a full and individual evaluation. In circumstances when the development and implementation of general education interventions are not appropriate to the needs of the individual, the multidisciplinary team may determine that a full and individual evaluation shall be conducted. Documentation of the rationale for such action shall be included in the individual's educational record. The parent of a child receiving general education interventions may request that the agency conduct a full and individual evaluation at any time during the implementation of such interventions.

a. Each LEA shall provide general notice to parents on an annual basis about the provision of general education interventions that occur as a part of the agency's general program and that may occur at any time throughout the school year.

b. General education interventions shall include teacher consultation with special education support and instructional personnel working collaboratively to improve an individual's educational performance. The activities shall be documented and shall include measurable and goal-directed attempts to resolve the presenting problem or behaviors of concern, communication with parents, collection of data related to the presenting problem or behaviors of concern, intervention design and implementation, and systematic progress monitoring to measure the effects of interventions.

c. If the referring problem or behaviors of concern are shown to be resistant to general education interventions or if interventions are demonstrated to be effective but require continued and substantial effort that may include the provision of special education and related services, the agency shall then conduct a full and individual evaluation.

41.48(3) Full and individual evaluation. A full and individual evaluation of the individual's educational needs shall be completed before any action is taken with respect to the initial provision of special education and related services. Written parental consent as required in these rules shall be obtained prior to conducting a full and individual evaluation. The purpose of the full and individual evaluation is to determine the educational interventions that are required to resolve the presenting problem, behaviors of concern, or suspected disability, including whether the educational interventions are special education.

a. A full and individual evaluation shall include:

(1) An objective definition of the presenting problem, behaviors of concern, or suspected disability.

(2) Analysis of existing information about the individual, including the results of general education interventions.

(3) Identification of the individual's strengths or areas of competence relevant to the presenting problem, behaviors of concern, or suspected disability.

(4) Collection of additional information needed to design interventions intended to resolve the presenting problem, behaviors of concern, or suspected disability, including, if appropriate, assess-

ment or evaluation of health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, adaptive behavior and motor abilities.

b. The evaluation is made by a multidisciplinary team.

41.48(4) *Communication disability.* Individuals who have a communication disability as their primary disability may not need a complete battery of assessments. However, a qualified speech-language pathologist would evaluate each individual with a suspected communication disability using procedures that are appropriate for the diagnosis and appraisal of a communication disability and, if necessary, make referrals for additional assessments needed to make an appropriate service decision.

281—41.49(256B,34CFR300) Assessment procedures, tests, and other evaluation materials.

The assessment procedures, tests and other evaluation materials used in the identification process shall be consistent with the following:

41.49(1) *Materials.* The tests and other evaluation materials:

a. Are provided and administered in the individual's native language or other mode of communication, unless it is clearly not feasible to do so.

b. Have been validated for the specific purpose for which they are used.

c. Are administered by trained personnel in conformance with the instructions provided by their producer.

41.49(2) *Tailored tests and materials.* The tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

41.49(3) *Impaired sensory, manual or speaking skills.* The tests and other evaluation materials are selected and administered so as best to ensure that when a procedure or test is administered to an individual with impaired sensory, manual, or speaking skills, the test results accurately reflect the individual's aptitude or achievement level or whatever other factors the procedure or test purports to measure, rather than reflecting the individual's impaired sensory, manual, or speaking skills (except where those skills are the factors that the procedure or test purports to measure).

41.49(4) *Nondiscriminatory.* The tests and other evaluation materials are selected and administered so as not to be racially or culturally discriminatory.

281—41.50(256B,34CFR300) Interpreting evaluation data. In interpreting evaluation data and in making decisions, each agency shall employ the following standards.

41.50(1) *No single source or procedure.* Draw upon information from a variety of sources and use more than one procedure for determining the appropriate intervention for an individual.

41.50(2) *Documentation.* Ensure that information obtained from all evaluation procedures and sources is documented and carefully considered.

41.50(3) *Group decision.* Ensure that the decision is made by a group of persons, including persons knowledgeable about the individual, the meaning of the evaluation data and the service options.

41.50(4) *Consideration of LRE.* Ensure that the decision is made in conformity with division VI.

41.50(5) *IEP requirement.* If a determination is made that an individual requires special education, procedural safeguards shall be afforded and an IEP must be developed for the individual in accord with these rules.

281—41.51(256B) Dissenting opinions. Each AEA shall have written procedures for the filing of dissenting opinions by educational personnel who do not agree with the team's conclusions or with the recommended special education and related services for an individual. Such procedures shall include the receipt and review of the dissenting opinion by the director and a response from the director within ten days of the filing date of the dissenting opinion. No disciplinary sanctions may be imposed against authors of dissenting opinions for comments made in good faith. Parents who do not agree with the team's conclusions or with the recommended special education and related services for an individual may file concerns through the procedures described in rules 41.105(256B,34CFR300), 41.106(256B,34CFR300), 41.107(256B,34CFR300), and division XI.

281—41.52(256B) Entitlement. Based upon the decision of the multidisciplinary team, the director shall certify the individual's entitlement for special education. Individuals determined to have entitlement for special education shall have an IEP developed prior to the provision of special education and related services. A confidential record, subject to audit by the department, registering the name and required special education and related service of each individual requiring special education, shall be maintained by the AEA and provision made for its periodic revision.

281—41.53(256B) Programming beyond the age of 21. An agency may continue the special education and related services of an eligible individual beyond the individual's twenty-first birthday if the person had an accident or prolonged illness that resulted in delays in the initiation of or interruption in that individual's special education. The agency must request approval from the department in accord with Iowa Code section 256B.8.

281—41.54(256B,34CFR300) Independent educational evaluation. A parent has a right to an independent educational evaluation as described in rule 41.109(256B,34CFR300). If a parent obtains an independent educational evaluation at public or private expense, the results of the evaluation must be considered by the agency in any decision made with respect to the provision of FAPE to the individual and may be presented as evidence at a hearing regarding the individual.

281—41.55 Reserved.

281—41.56(256B,34CFR300) Evaluating individuals with learning disabilities.

41.56(1) Additional team members. In evaluating an individual suspected of having a learning disability, in addition to the members of the multidisciplinary team identified in 41.48(3) "b," the team must include:

a. The individual's general education teacher or, if the individual does not have a regular teacher, a general education teacher qualified to teach an individual of that age; or, for an individual of less than school age, an individual qualified to teach a child of that age.

b. At least one person qualified to conduct individual diagnostic evaluations of individuals, such as a school psychologist, a special education consultant, a special education teacher licensed in learning disabilities, or a speech-language pathologist.

41.56(2) Criteria for determining the existence of a learning disability.

a. A team may determine that an individual has a learning disability if:

(1) The individual does not achieve commensurate with the individual's age and ability levels in one or more of the ability areas listed in 41.56(2) "a" (2) when provided with learning experiences appropriate for the individual's age and ability levels.

(2) The team finds that the individual has a severe discrepancy between achievement and intellectual ability in one or more of the following areas: oral expression; listening comprehension; written expression; basic reading skill; reading comprehension; mathematics calculation; or mathematics reasoning.

b. The team may not identify an individual as having a learning disability if the discrepancy between ability and achievement is primarily the result of a visual, hearing or motor impairment; a mental disability; a behavior disorder; or environmental, cultural or economic disadvantage.

41.56(3) Observation. At least one team member other than the individual's general education teacher shall observe the individual's academic performance in the general classroom setting. In the case of an individual of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

41.56(4) Written report. The team shall prepare a written report of the results of the evaluation. Each team member shall certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the team member must submit a separate statement presenting the member's conclusions. The written report shall include a statement of:

- a. Whether the individual has a learning disability.
- b. The basis for making the determination.
- c. The relevant behavior noted during the observation of the individual.
- d. The relationship of that behavior to the individual's academic functioning.
- e. The educationally relevant medical findings, if any.
- f. Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services.
- g. The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

281—41.57 and 41.58 Reserved.

DIVISION VIII IEP

281—41.59(256B,34CFR300) Definitions. As used in this division:

“*IEP team*” includes members specified in rule 41.62(256B,34CFR300).

“*Participating agency*” means a state or local agency, other than the public agency responsible for an individual's education, that is financially and legally responsible for providing transition services to the individual.

281—41.60(256B,34CFR300) Effective date. At the beginning of each school year, each agency shall have in effect an IEP for every eligible individual from that agency. An IEP must be in effect before special education and related services are provided to an eligible individual and be implemented as soon as possible following the meetings under rule 41.61(256B,34CFR300). It is expected that the IEP of an eligible individual will be implemented immediately following the meetings under rule 41.61(256B, 34CFR300). An exception to this would be when the meetings occur during the summer or a vacation period, or where there are circumstances that require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the eligible individual.

281—41.61(256B,34CFR300) Meetings.

41.61(1) General. Each agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of an eligible individual.

41.61(2) Timeline. A meeting to develop an IEP for an eligible individual must be held within 30 calendar days of a determination that the individual needs special education and related services.

41.61(3) Review. Each agency shall initiate and conduct meetings to review each eligible individual's IEP periodically and, if appropriate, revise its provisions. A meeting must be held for this purpose at least once a year.

281—41.62(256B,34CFR300) Participants in meetings.

41.62(1) General. The agency shall ensure that each meeting includes the following participants:

a. A representative of the agency, other than the eligible individual's teacher, who is qualified to provide or supervise the provision of special education, and who has the authority to commit resident LEA resources. If the eligible individual is receiving only speech-language services, the representative of the agency may be the speech-language pathologist.

b. The eligible individual's teacher.

(1) For an individual who is receiving special education, the teacher could be the individual's special education teacher. If the individual is receiving only speech-language services, the teacher could be the speech-language pathologist.

(2) For an individual who is being considered for special education, the teacher could be the individual's general education teacher, or a teacher qualified to provide the type of service the individual may receive, or both.

(3) If the individual is not in school or has more than one teacher, the agency may designate which teacher, agency representative or special education personnel will participate in the meeting.

(4) For an individual who is receiving only special education support services other than speech-language services, the teacher would be the general education teacher.

c. Either the teacher or the agency representative shall be qualified in the area of the individual's education need.

d. One or both of the individual's parents subject to rule 41.64(256B, 34CFR300).

e. The individual, if appropriate.

f. Other individuals at the discretion of the parent or agency.

41.62(2) *Evaluation personnel.* For an eligible individual who has been evaluated for the first time, the agency shall ensure:

a. That a member of the multidisciplinary team participates in the meeting; or

b. That the representative of the agency, the individual's teacher, or some other person is present at the meeting who is knowledgeable about the evaluation procedures used with the individual and is familiar with the results of the evaluation.

c. For the individual whose primary disability is speech-language impairment, the evaluation personnel would normally be the speech-language pathologist.

41.62(3) *Transition planning participants.*

a. If a purpose of the meeting is the consideration of transition planning for an eligible individual, the agency shall invite the individual and a representative of any other agency that is likely to be responsible for providing or paying for transition services.

b. If the individual does not attend, the agency shall take other steps to ensure that the individual's preferences and interests are considered.

c. If an agency invited to send a representative to a meeting does not do so, the agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

281—41.63 Reserved.

281—41.64(256B,34CFR300) Parent participation.

41.64(1) *Parent participation in IEP meetings.* Each agency shall take steps to ensure that one or both of the parents of the eligible individual are present at each IEP meeting or are afforded the opportunity to participate, including:

a. Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend.

b. Scheduling the meeting at a mutually agreed on time and place.

c. Notifying the parents of the purpose, time, and location of the meeting and who (name and position) will be in attendance.

d. If a purpose of the meeting is the consideration of transition planning for a student, the notice must also:

(1) Indicate this purpose.

(2) Indicate that the agency will invite the student.

(3) Identify any other agency that will be invited to send a representative.

e. The notice shall also inform parents that they may bring other people to the meeting.

41.64(2) *Documentation.* If neither parent can attend, the agency shall use other methods to ensure parent participation, including individual or conference telephone calls. A meeting may be conducted without a parent in attendance if the agency is unable to convince the parents that they should attend. In this case the agency must have a record of its attempts to arrange a mutually agreed-on time and place such as:

- a. Detailed records of telephone calls made or attempted and the results of those calls.
- b. Copies of correspondence sent to the parents and any responses received.
- c. Detailed records of visits made to the parent's home or place of employment and the results of those visits.
- d. The procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency shall keep a record of its efforts to contact parents.

41.64(3) *Interpreters for parents.* The agency shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents with deafness, who are hard of hearing, or whose native language is other than English.

41.64(4) *Copy of IEP to parents.* The agency shall give the parent, on request, a copy of the IEP.

281—41.65 Reserved.

281—41.66(256B,34CFR300) *The IEP.* The IEP is a written statement for an eligible individual that is developed and implemented in accord with these rules. The IEP document is a written record of the decisions reached at the IEP meeting. It serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to jointly decide what the individual's needs are, what services will be provided to meet those needs, and what the anticipated outcomes may be. The IEP process provides an opportunity for resolving any differences between the parents and the school concerning the special education needs of an eligible individual. The IEP sets forth in writing a commitment of resources necessary to enable an eligible individual to receive needed special education and related services appropriate to the individual's special learning needs. There shall be one IEP which specifies all the special education and related services for an eligible individual. The IEP is a compliance-monitoring document to determine whether an eligible individual is actually receiving the FAPE agreed to by the parents and school.

281—41.67(256B,34CFR300) *Content of IEP.* The IEP shall include the following:

41.67(1) *Present levels of educational performance (PLEP).* A statement of the individual's present levels of educational performance.

a. The statement shall accurately describe the effect of the eligible individual's disability on the individual's performance in any area of education that is affected, including academic areas and non-academic areas.

b. A disability label may not be used as a substitute for PLEP.

c. The statement shall be written in objective measurable terms, to the extent possible.

d. Test scores, if included, must be self-explanatory or an explanation of the scores given.

e. There must be a direct relationship between the PLEP and the other components of the IEP.

41.67(2) *Annual goals; instructional objectives.* A statement of annual goals, including short-term instructional objectives.

a. Goals and objectives shall provide a mechanism for determining whether the anticipated outcomes for the individual are being met and whether the placement and services are appropriate to the individual's special learning needs.

b. Goals and objectives shall not be as specific as those normally found in daily, weekly or monthly instructional plans.

c. Annual goals are statements that describe what an eligible individual can reasonably be expected to accomplish within a 12-month period in special education.

d. Short-term instructional objectives are measurable intermediate steps between PLEP and the annual goals for the individual.

e. IEP objectives shall be written before the individual is provided special education and related services.

f. Short-term instructional objectives cannot be changed without holding an IEP meeting for the purpose of developing, reviewing and revising the IEP.

41.67(3) *Special education and participation in general education.* A statement of the specific special education and related services to be provided to the eligible individual and the extent that the individual will be able to participate in general education programs.

a. The IEP for an eligible individual shall include all of the specific special education and related services needed by the individual.

b. Special education and related services shall be provided by the school directly or through contract or other arrangements.

c. If modifications (supplementary aids and services) to the general education program are necessary to ensure the individual's participation in that program, those modifications must be described in the individual's IEP.

d. All special education and related services needed by the individual shall be specified in the IEP.

e. If modifications to the general vocational education program are necessary in order for the individual to participate in that program, those modifications must be included in the IEP. If the individual needs a specially designed vocational education program, then it must be described in all applicable areas of the individual's IEP.

f. The amount of services to be provided must be stated in the IEP so that the level of the agency's commitment of resources will be clear to parents and other IEP team members. Changes in the amount of services listed in the IEP cannot be made without holding another IEP meeting. However, as long as there is no change in the overall amount, some adjustments in scheduling the services are possible (based on the professional judgment of the service provider) without holding another IEP meeting. The parents shall be notified whenever this occurs.

41.67(4) *Projected dates of services.* The projected dates for initiation of services and the anticipated duration of the services.

a. In general, the anticipated duration of services would be up to 12 months.

b. If a particular service is projected to be needed for more than one year, it may be projected in the IEP for the requisite time. However, the duration of each service must be reconsidered whenever the IEP is reviewed and at least annually.

41.67(5) *Physical education.* Physical education services, specially designed if necessary, must be made available to every eligible individual receiving FAPE. If modifications to the general physical education program are necessary in order for the individual to participate in that program, those modifications must be described in the IEP. If the IEP team determines that the individual's physical education needs cannot be met through participation in the general physical education program with peers who are nondisabled, a specially designed physical education program must be provided. This specially designed physical education program must be addressed in all applicable parts of the IEP. The public agency responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services.

41.67(6) *Criteria, evaluation and schedules.* Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved. Progress monitoring procedures shall be used in evaluating progress toward accomplishment of short-term instructional objectives.

41.67(7) *Transition planning.* The IEP for each eligible individual, beginning no later than the age of 16 and at a younger age, if determined appropriate, must include a statement of the needed transition services defined in rule 41.72(256B,34CFR300) including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the individual leaves the school setting. If the IEP team determines that services are not needed in one or more of the coordinated set of activities (instruction, community experiences, and development of employment and other postschool adult living objectives), the IEP must include a statement to that effect and the basis upon which the determination was made.

41.67(8) *Projected graduation.* The IEP must include a statement of the projected date of graduation at least 18 months in advance of said date and the criteria to be used in judging whether graduation shall occur. Prior to graduation, the IEP team must find that these criteria have been met.

281—41.68(256B,34CFR300) Support services only. An IEP that satisfies the requirements of rule 41.60(256B,34CFR300) to rule 41.67(256B,34CFR300) shall be developed for eligible individuals who require only special education support services. The special education support service specialist with knowledge in the area of need shall have primary responsibility for recommending the need for support service, the type or model of service to be provided, and the amount of service to be provided. However, the determination that an individual is eligible for special education shall meet the requirements of division VII. The special education support service provider shall attend the IEP meetings for the eligible individual being served.

281—41.69(34CFR300,303) IFSP to IEP. Eligible individuals younger than the age of two years and three months shall have an IFSP which also meets all the requirements of an IEP as outlined in subrule 41.70(3). Eligible individuals who are two years of age and will reach the age of three during the school year, who are receiving FAPE, and do not require services from other agencies, may be served through an IEP.

281—41.70(256B,34CFR300) Related IEP requirements.

41.70(1) Completed IEP. It is not permissible for an agency to present a completed and finalized IEP to parents for their approval before there has been a full discussion with the parents regarding the eligible individual's need for special education and related services and the services the agency will provide to the individual. It would be appropriate for agency personnel to come prepared with evaluation findings, statements of present levels of educational performance, and a recommendation regarding annual goals, short-term instructional objectives, and the kind of special education and related services to be provided. However, the agency must make it clear to the parents at the outset of the meeting that the services proposed by the agency are only recommendations for review and discussion with the parents.

41.70(2) LRE considerations. When developing an eligible individual's IEP, the IEP team shall consider the following questions regarding the provision of special education and related services:

- a. What accommodations, modifications, and adaptations does the individual require?
- b. Why can't these accommodations, modifications, and adaptations be provided within the general classroom?
- c. Is there a potential detriment to the individual if served in the general classroom?
- d. How will the individual's participation in the general classroom impact the other students?

41.70(3) Consolidated IEP. In instances where an eligible individual must have both an IEP and an individualized service plan under another federal program, it is possible to develop a single, consolidated document if it contains all of the information required in an IEP and if all of the necessary parties participate in its development.

41.70(4) Performance contract. The IEP is not a performance contract that imposes liability on a teacher, agency, or other person if an eligible individual does not meet the IEP goals and objectives. However, the agency must provide special education and related services in accord with the IEP, and the teacher, agency, and other persons must make good faith efforts to assist the individual in achieving the goals and objectives listed in the IEP. Further, this does not limit a parent's right to complain and ask for revisions of the individual's program or to invoke due process procedures if the parent feels that these efforts are not being made.

41.70(5) Amending IEPs. An IEP cannot be amended without conducting an IEP meeting and following all requirements pertaining to an IEP meeting.

41.70(6) Interim IEP. An IEP must be in effect before special education and related services are provided to an eligible individual. This does not preclude the development of an interim IEP which meets all the requirements of rule 41.67 when the IEP team determines that it is necessary to temporarily provide special education and related services to an eligible individual as part of the evaluation process, before the IEP is finalized, to aid in determining the appropriate services for the individual. An interim IEP may also be developed when an eligible individual moves from one LEA to another and a copy of the current IEP is not available, or either the LEA or the parent believes that the current IEP is

not appropriate or that additional information is needed before a final decision can be made regarding the specific special education and related services that are needed. IEP teams cannot use interim IEPs to circumvent the requirements of this division or of division VII. It is essential that the temporary provision of service not become the final special education for the individual before the IEP is finalized. In order to ensure that this does not happen, IEP teams shall take the following actions:

a. Specific conditions and timelines. Develop an interim IEP for the individual that sets out the specific conditions and timelines for the temporary service. An interim IEP shall not be in place for more than 30 school days.

b. Parent agreement and involvement. Ensure that the parents agree to the interim service before it is carried out and that they are involved throughout the process of developing, reviewing, and revising the individual's IEP.

c. Completing evaluation and making judgments. Set a specific timeline for completing the evaluation and making judgments about the appropriate services for the individual.

d. Conducting meeting. Conduct an IEP meeting at the end of the trial period in order to finalize the individual's IEP.

41.70(7) Individuals with visual impairment. The initial IEP and each annual review of the IEP for an eligible individual with visual impairment shall include discussion of instruction in braille reading and writing and a written explanation of the reasons why the individual is using a given reading and writing medium or media. If the reasons have not changed since the previous year, the written explanation for the current year may refer to the fuller explanation from the previous year.

a. An eligible individual for whom braille services are appropriate, as defined in division II, rule 41.5(256B, 34CFR300), is entitled to instruction in braille reading and writing that is sufficient to enable the eligible individual to communicate with the same level of proficiency as an individual of otherwise comparable ability at the same grade level.

b. An eligible individual, with a visual impairment including blindness, as defined in division II, rule 41.5 (256B,34CFR300), whose primary learning medium is expected to change may begin instruction in the new medium before it is the only medium the eligible individual can effectively use.

c. Braille reading and writing instruction may only be provided by a teacher licensed at the appropriate grade level to teach individuals with visual impairments.

281—41.71 Reserved.

281—41.72(256B,34CFR300) Transition planning.

41.72(1) Transition. Transition means a coordinated set of activities for an eligible individual, designed within an outcome-oriented process, that promotes movement from school to postschool activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation.

41.72(2) Set of activities. The coordinated set of activities shall:

a. Individual needs. Be based on the individual needs, taking into account the individual's preferences and interests.

b. Needed activities. Include needed activities in the areas of instruction; community experiences; the development of employment and other postschool adult living objectives; and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

281—41.73(256B,34CFR300) Agency responsibility for transition planning. If a participating agency fails to provide agreed-upon transition services contained in the IEP of an eligible individual, the agency responsible for the individual's education shall, as soon as possible, initiate a meeting for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary, revising the student's IEP. Nothing in these rules relieves any participating agency of the responsibility to provide or pay for any transition service that the agency would otherwise provide to individuals with disabilities who meet the eligibility criteria of that agency.

281—41.74(34CFR300) Nonpublic school placements. To the extent consistent with the number and location of students enrolled in nonpublic schools, provision is made for the participation of nonpublic school students with disabilities in programs assisted by or carried out under 34 CFR Part 300, July 1, 1994, by providing them with special education and related services.

41.74(1) *Placements by public agencies.*

a. Before a public agency places an eligible individual in, or refers an eligible individual to, a nonpublic school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the individual in accordance with division VIII.

b. The agency shall ensure that a representative of the nonpublic school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the nonpublic school or facility, including individual or conference telephone calls.

c. After an eligible individual enters a nonpublic school or facility, any meetings to review and revise the individual's IEP may be initiated and conducted by the nonpublic school or facility at the discretion of the public agency.

d. If the nonpublic school or facility initiates and conducts these meetings, the public agency shall ensure that the parents and an agency representative are involved in any decision about the individual's IEP and agree to any proposed changes in the program before those changes are implemented.

e. Even if a nonpublic school or facility implements an individual's IEP, responsibility for compliance with these rules remains with the public agency and the state.

41.74(2) *Eligible individuals in nonpublic schools.* If an eligible individual is enrolled in a nonpublic school and receives special education or related services from a public agency, the public agency shall:

a. Initiate and conduct meetings to develop, review, and revise an IEP for the individual, in accordance with division VIII; and

b. Ensure that a representative of the nonpublic school attends each meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the nonpublic school, including individual or conference telephone calls.

41.74(3) *Placement of individuals by parents.*

a. If an eligible individual has FAPE available and the parents choose to place the individual in a nonpublic school or facility, the public agency is not required by 34 CFR Part 300, July 1, 1994, to pay for the individual's education at the nonpublic school or facility. However, the public agency shall make services available to the individual as provided in rule 41.74(256B,34CFR300).

b. Disagreements between a parent and a public agency regarding the availability of a program appropriate for an eligible individual, and the question of financial responsibility, are subject to the due process procedures of division XI.

281—41.75(256B,34CFR300,303) Transition from Part H to Part B. Policies and procedures to ensure a smooth transition for individuals receiving early childhood special education services through an IFSP under 20 U.S.C. Chapter 33, subchapter VIII (Part H) who are eligible for continued participation in early childhood special education under 20 U.S.C. Chapter 33, subchapter II (Part B) shall contain:

41.75(1) *Families.* A description of how the families will be included in planning for transition.

41.75(2) AEA role. A description of how the AEA will:

- a. Notify the appropriate LEA or AEA in which the eligible individual resides.
- b. Convene, with the approval of the family, a conference among the family, the LEA or AEA at least 90 calendar days before the child's third birthday or, if earlier, the date on which the individual is eligible for the preschool program under Part B in accord with state law, to:

(1) Review the eligible individual's program options for the period from the individual's third birthday through the remainder of the school year.

- (2) Establish a plan for transition.

281—41.76 Reserved.

281—41.77(256B,34CFR300) Reevaluation. Each agency shall ensure that the IEP of each eligible individual is reviewed in accord with subrule 41.61(3) and that an evaluation of each eligible individual, based on procedures that meet the requirements of subrule 41.48(3), is conducted every three years or more frequently if conditions warrant or if an eligible individual's parent or teacher requests an evaluation. The reevaluation is designed to determine an eligible individual's past progress, current needs, impact of current interventions, future interventions and entitlement for special education.

281—41.78(256B) Trial placement. Prior to transfer from a special education program or service, an eligible individual may be provided a trial placement in the general education setting of not more than 45 school days. A trial placement plan shall be incorporated into this individual's IEP.

281—41.79 Reserved.

281—41.80(256B,34CFR300) Extended year special education. In certain circumstances, to ensure provision of FAPE, an eligible individual shall be provided extended year special education (EYSE) in identified critical skill areas when the special education in which this individual is regularly participating is not in session for periods of three or more consecutive weeks.

41.80(1) Critical skills. Critical skills shall be:

- a. Determined at the time of the development or revision of the IEP and identified in the IEP;
- b. Appropriate for the eligible individual, given this individual's ability to acquire the selected skill; and
- c. A priority for developmental and age-appropriate growth.

41.80(2) Determining need. A review of an eligible individual with identified critical skills shall be conducted by the IEP team for the purpose of determining the need for EYSE. This review shall be done at least 60 calendar days prior to the interruption of special education in which this individual is regularly participating. The determination of need for EYSE shall be made only for the immediate period of interruption. The provision of EYSE for the immediate period does not imply that EYSE will be required for subsequent periods in the absence of a finding to that effect by the IEP team. In limited cases where the 60-calendar-day standard is impractical (i.e., late enrollment; verifiable change in educational needs), the review for determining need for EYSE shall be conducted with expediency.

41.80(3) Basis for determining need. Determination of the need for EYSE for each eligible individual shall be based on empirical and qualitative data collected by the IEP team. An eligible individual shall be provided EYSE if, in the IEP team's interpretation of the data, the denial of EYSE would significantly jeopardize the benefits accrued to the individual through the educational program provided during the regular school year, and either of the following conditions is present:

- a. Failure to maintain an acquired critical skill, as a result of an interruption of special education in a critical skill area, to the extent that a period of reteaching of nine or more weeks will be required to regain previous competence. In these cases, EYSE programming shall be designed to provide for maintenance rather than continued development of the skills identified.

b. Rare and unusual circumstances which will result in the loss or a severe limitation of the eligible individual's capacity and potential to acquire a critical skill. In these cases, EYSE shall provide for the maintenance of the critical skill and may also provide for the continued development or acquisition of a critical skill to prevent the anticipated loss or limitation.

41.80(4) Appeal. Should the parents of an eligible individual disagree with the IEP team's decision regarding EYSE and wish to appeal the team's decision, an affidavit of appeal shall be filed pursuant to division XI.

281—41.81 Reserved.

DIVISION IX SERVICES

281—41.82(256B,34CFR300) General.

41.82(1) Individually designed. The special education and related services provided to an eligible individual shall be individually determined and based on the specific educational needs of the individual.

41.82(2) Least restrictive environment. To the maximum extent appropriate to the needs of the eligible individual, special education and related services shall be designed and delivered so as to maintain the individual in the general education environment and as detailed in division VI of these rules.

41.82(3) Based on IEP or IFSP. The special education and related services provided an eligible individual shall be consistent with the services described in the individual's IEP or IFSP.

41.82(4) Combination of services. A combination of services may be necessary to address the educational needs of an eligible individual. In such cases, the personnel providing the various services shall coordinate activities and efforts, and the services shall be described in one IEP or IFSP.

281—41.83(256B,34CFR300) Continuum of services. Each LEA, in conjunction with the AEA, shall ensure that a continuum of services from birth to the maximum age provided by the Iowa Code are available or shall be made available to meet the educational needs of eligible individuals.

281—41.84(256B,273,34CFR300) Instructional services. Instructional services are the specially designed instruction and accommodations provided by special education instructional personnel to eligible individuals. These services are ordinarily provided by the LEA, but in limited circumstances, may be provided by another LEA, the AEA or another recognized agency through contractual agreement. An agency may choose to use the program models and related requirements described in subrule 41.84(1) for delivering instructional services, or the development process described in subrule 41.84(2) for creating a delivery system of instructional services.

41.84(1) Program models. An agency may elect to use the following program models and delivery methods in providing instructional services to eligible individuals.

a. The following program models are for school-aged individuals.

(1) "*Resource teaching program*" is an educational program for individuals who are enrolled in the general education curriculum for a majority of the school day but who require specially designed instruction in specific skill areas on a part-time basis. Individuals enrolled in this type of program require specially designed instruction for a minimal average of 30 minutes per day. This program shall include provisions for ongoing consultation and demonstration with the general education teachers of the individuals served. This program may be operated on a multicategorical basis. The teacher of a resource teaching program shall serve in no more than two attendance centers. The maximum class size for this program is 18 students at both the elementary and secondary levels with the exception of programs for individuals with hearing impairment or visual impairment which shall be 15 students at both levels. (Reference Iowa Code section 256B.9(1) "b")

(2) “*Special class with integration*” is an educational program for individuals who have similar educational needs and who can benefit from participation in the general education curriculum in one or more academic offerings of the general education curriculum. The program shall include provisions for ongoing consultation and demonstration with the general education teachers. This program may be operated on a multicategorical basis. For approval to be granted, the following conditions shall be considered: support services provided to the program including appropriately authorized consultant services; the need for and availability of paraprofessionals to assist the teacher; the individuals served have comparable educational needs; the chronological age range does not exceed four years; and the program curriculum consists of appropriate content for the disabilities served. The maximum class size for this program is 12 students at the elementary level and 15 students at the secondary level with the exception of programs for individuals with hearing impairment or visual impairment which shall be 10 students at both levels. (Reference Iowa Code section 256B.9(1)“b”)

(3) “*Self-contained special class with little integration*” is an educational program for individuals with similar educational needs who require specially designed instruction for most of their educational program but who can benefit from limited participation in the general education curriculum with non-disabled individuals. The maximum class size for this program is 8 students at the elementary level and 10 students at the secondary level. The maximum class size of this program at the secondary level may be 15 students if an AEA work experience coordinator coordinates and supervises on- and off-campus work experiences for those individuals requiring specially designed career exploration and vocational preparation. (Reference Iowa Code section 256B.9(1)“c”)

(4) “*Self-contained special class*” is an educational program for individuals with severe disabilities who have similar educational needs and whose total instructional program must be specially designed and provided by a special education teacher. The students served by this program shall be provided opportunities to participate in activities with nondisabled individuals. The staff-to-student ratio for this program shall be one teacher and one educational aide for each five students. When students numbering six through nine are added, an additional educational aide must be employed. When the tenth student is added, another special education teacher must be employed. The chronological age range of students served in this program shall not exceed six years. (Reference Iowa Code section 256B.9(1)“d”)

b. The following delivery models are for ECSE.

(1) Special education instructional services can be provided in a “*community-based early childhood program*” for young children. Instructional services are provided and monitored on site by an early childhood special education professional. The program may be a publicly funded or a fee-based early childhood community-based program. The agency responsible for providing special education may contract with a fee-based community program.

(2) “*Colocation*” refers to the provision of special education instructional services through an arrangement that combines the services of ECSE and publicly funded or fee-based early childhood program. The programs are combined in one room or in close proximity to each other in order to promote the interaction of children with and without disabilities.

(3) “*Reverse integration program*” refers to an arrangement that enrolls children without disabilities in an ECSE classroom. The reverse integration program is considered one of the more restrictive integration models.

(4) “*Early childhood special education center-based programs*” are for children below the age of six. These programs are served by one ECSE teacher and one instructional assistant, and may be operated on a multicategorical basis. The programs serve up to eight children unless the program is for individuals with severe disabilities in which case the maximum class size is five children.

(5) “*Home instruction*” refers to the provision of special education instructional services in the home for children below the age of six.

(6) “*Dual programming*” includes both center-based ECSE intervention and an integrated component; for example, a child may attend both an ECSE program and a program for preschool children without disabilities. Intervention specific to the IEP or IFSP goals must occur in both the special and general education environments.

c. In applying the maximum class sizes specified in this subrule, the following conditions shall be considered:

(1) Maximum class size limits are predicated upon one teacher to the specified class size. When a teacher is employed less than full-time for a resource teaching program or ECSE center-based program, the maximum class size shall be proportionate to the full-time equivalency of the teacher employed.

(2) If, in unique circumstances, it is necessary to exceed the class size maximum for a special class with integration, the chronological age range shall not exceed six years or four years for a class operated on a multicategorical basis.

(3) When circumstances necessitate placing an eligible individual in a less restrictive program for receipt of the recommended program, that individual shall count as two individuals in computing the class size.

41.84(2) LEA-developed delivery system. An agency may elect to use the following development process for creating a system for delivering instructional services.

a. The delivery system shall meet the continuum of services requirements of rules 41.38(256B,34CFR300) and 41.83(256B,34CFR300) and shall provide for the following:

(1) The provision of accommodations and modifications to the general education environment and program, including modification and adaptation of curriculum, instructional techniques and strategies, and instructional materials.

(2) The provision of specially designed instruction and related activities through cooperative efforts of special education teachers and general education teachers in the general education classroom.

(3) The provision of specially designed instruction on a limited basis by a special education teacher in the general classroom or in an environment other than the general classroom, including consultation with general education teachers.

(4) The provision of specially designed instruction to eligible individuals with similar special education instructional needs organized according to the type of curriculum and instruction to be provided, and the severity of the educational needs of the eligible individuals served.

b. The delivery system shall be described in writing and shall include the following components:

(1) A description of how services will be organized and how services will be provided to eligible individuals consistent with the requirements of divisions VI and IX of these rules, and the provisions described in paragraph 41.84(2)“a.”

(2) A description of how the caseloads of special education teachers will be determined and regularly monitored to ensure that the IEPs of eligible individuals are able to be fully implemented.

(3) A description of the procedures a special education teacher can use to resolve concerns about caseload. The procedures shall specify timelines for the resolution of a concern and identify the person to whom a teacher reports a concern. The procedures shall also identify the person or persons who are responsible for reviewing a concern and rendering a decision, including the specification of any corrective actions.

(4) A description of the process used to develop the system, including the composition of the group responsible for its development.

(5) A description of the process that will be used to evaluate the effectiveness of the system.

c. The following procedures shall be followed by the agency:

(1) Before initiating the development of the delivery system, the LEA board shall approve such action and the LEA personnel and parents who will participate in the development of the alternative.

(2) The delivery system shall be developed by a group of individuals that includes parents of eligible individuals, special education and general education teachers, administrators, and at least one AEA representative. The AEA representative is selected by the director.

(3) The director shall verify that the delivery system is in compliance with these rules prior to LEA board adoption.

(4) Prior to presenting the delivery system to the LEA board for adoption, the group responsible for its development shall provide an opportunity for comment on the system by the general public. In

presenting the delivery system to the LEA board for adoption, the group shall describe the comment received from the general public and how the comment was considered.

(5) The LEA board shall approve the system prior to implementation.

d. The procedure presented in subrule 41.132(9) shall be followed in applying the weighting plan for special education instructional funds described in Iowa Code section 256B.9 to any delivery system developed under these provisions.

281—41.85 Reserved.

281—41.86(256B,34CFR300) Support services. Support services are the specially designed instruction and activities which augment, supplement or support the educational program of eligible individuals. These services are usually provided by the AEA but may be provided by contractual agreement, subject to the approval of the board, by another qualified agency.

41.86(1) Delivery methods. Delivery methods include the following:

a. Cooperative efforts of special education support personnel and the general education teacher in the general education classroom to provide specially designed instruction and related activities.

b. Cooperative efforts of special education support personnel and special education teachers.

c. Provision of specially designed instruction by a special education support service provider in the general classroom or in an environment other than the general classroom.

d. Consultation with general education teachers and special education teachers, and may include the modification of the general education environment, curriculum, and instruction.

e. Provision of support services to an eligible individual through this individual's parents, teachers or others in the environment.

41.86(2) Services included. Support services include special education consultant services, educational strategist services, audiology, occupational therapy, physical therapy, school psychology, school social work services, special education nursing services, speech-language services, and work experience services provided by the support personnel described in subrule 41.9(3).

281—41.87 Reserved.

281—41.88(256B,34CFR300) Itinerant services. Special education may be provided to eligible individuals on an itinerant basis. These services are usually provided by the AEA but may be provided by contractual agreement, subject to the approval of the board, by the LEA or another qualified agency.

41.88(1) School based. Special education may be provided on an itinerant basis whenever the number, age, severity, or location of eligible individuals to be served does not justify the provision of professional personnel on a full-time basis to an attendance center.

41.88(2) Home service or hospital service. Special education shall be provided to eligible individuals whose condition precludes their participation in the general and special education provided in schools or related facilities. The provision of services in a home or hospital setting shall satisfy the following:

a. The service and the location of the service shall be specified in the individual's IEP.

b. The status of these individuals shall be periodically reviewed to substantiate the continuing need for and the appropriateness of the service.

c. When services are provided in the home for an individual who has been removed from school because of unacceptable school behaviors, the status of the individual shall be reviewed at least every 30 calendar days by the IEP team to review other alternatives and to determine whether itinerant service in the home continues to be appropriate.

d. Procedural safeguards shall be afforded to individuals receiving special education through itinerant services in a home or hospital setting. A need for itinerant services in a home or hospital setting must be determined at a meeting to develop or revise the individual's IEP, and parents must give consent or be given notice, as appropriate.

281—41.89 Reserved.

281—41.90(256B,34CFR300) Supplementary aids and services. Supplementary aids and services shall be provided in order for an eligible individual to be served in the general education classroom environment. These may include intensive short-term specially designed instruction; educational interpreters; readers for individuals with visual impairments; special education assistants; special education assistants for individuals with physical disabilities for assistance in and about school, and for transportation; materials; and specialized or modified instructionally related equipment for use in the school.

281—41.91 Reserved.

281—41.92(256B,34CFR300) Assistive technology. Agencies shall ensure that assistive technology devices or assistive technology services, or both, as defined in rule 41.5(256B,34CFR300) and described in subrule 41.92(1), are made available to an eligible individual if required as part of the individual's special education and as specified in the IEP. Assistive technology services include:

41.92(1) Functional evaluation. The evaluation of the needs of an eligible individual, including a functional evaluation of this individual in the individual's customary environment.

41.92(2) Acquisition. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices.

41.92(3) Selections, adaptations and replacement. Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing of assistive technology devices.

41.92(4) Coordination and planning. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs.

41.92(5) Training or technical assistance. Training or technical assistance for an eligible individual or, when appropriate, the family of this individual; and for professionals, employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of eligible individuals.

281—41.93 Reserved.

281—41.94(256B,34CFR300) Related services. Related services mean such developmental, corrective and other services as are required to assist an individual with a disability to benefit from special education. Related services are not synonymous with support services as described in subrule 41.86(2).

41.94(1) Criteria. In order to establish the responsibility for agencies to provide a specific related service to an eligible individual, the following criteria shall be applied:

- a. The service can routinely be administered by school personnel.
- b. The service is basic to the goals and objectives of the eligible individual's IEP or IFSP and is required in the IEP or IFSP.
- c. The service has to be administered during the school day, as defined in 281—subrules 12.2(2) and 12.2(3), in order to reasonably expect the individual to be able to attend special education.

41.94(2) Services included. Related services include:

- a. Recreation, which means assessment of leisure function, therapeutic recreation services, recreation programs in schools and community agencies, and leisure education.
- b. Counseling services provided by qualified guidance counselors or other qualified personnel.

c. Rehabilitation counseling provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of an eligible individual. It also includes vocational rehabilitation services provided to eligible individuals by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

d. Medical services for diagnostic or evaluation purposes means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education.

e. Parent counseling and training, which means assisting parents in understanding the special needs of their child and providing parents with information about child development.

281—41.95 Reserved.

281—41.96(256B) Special health services. Some eligible individuals need special health services to participate in an educational program. These individuals shall receive special health services concomitantly with their educational program.

41.96(1) Definitions. The following definitions shall be used in this division, unless the context otherwise requires:

"Assignment and delegation" occurs when licensed health personnel, in collaboration with the education team, determine the special health services to be provided and the qualifications of individuals performing the health services. Primary consideration is given to the recommendation of the licensed health personnel. Each designation considers the individual's special health service. The rationale for the designation is documented.

"Coadministration" is the eligible individual's participation in the planning, management and implementation of the individual's special health service and demonstration of proficiency to licensed health personnel.

"Educational program" includes all school curricular programs and activities both on and off school grounds.

"Education team" may include the eligible individual, this individual's parent, administrator, teacher, licensed health personnel, and others involved in the individual's educational program.

"Health assessment" is health data collection, observation, analysis, and interpretation relating to the eligible individual's educational program.

"Health instruction" is education by licensed health personnel to prepare qualified designated personnel to deliver and perform special health services contained in the eligible individual's health plan. Documentation of education and periodic updates shall be on file at school.

"Individual health plan" is the confidential, written, preplanned and ongoing special health service in the educational program. It includes assessment, planning, implementation, documentation, evaluation and a plan for emergencies. The plan is updated as needed and at least annually. Licensed health personnel develop this written plan with the education team.

"Licensed health personnel" includes licensed registered nurse, licensed physician, and other licensed health personnel legally authorized to provide special health services and medications.

"Prescriber" is licensed health personnel legally authorized to prescribe special health services and medications.

"Qualified designated personnel" is a person instructed, supervised and competent in implementing the eligible individual's health plan.

"Special health services" includes, but is not limited to, services for eligible individuals whose health status (stable or unstable) requires:

1. Interpretation or intervention,
2. Administration of health procedures and health care, or
3. Use of a health device to compensate for the reduction or loss of a body function.

“*Supervision*” is the assessment, delegation, evaluation and documentation of special health services by licensed health personnel. Levels of supervision include situations in which:

1. Licensed health personnel are physically present.
2. Licensed health personnel are available at the same site.
3. Licensed health personnel are available on call.

41.96(2) *Special health services policy.* Each board of a public school or authorities in charge of an accredited nonpublic school shall, in consultation with licensed health personnel, establish policy and guidelines for the provision of confidential special health services in conformity with rules 41.94(256B,34CFR300) and 41.96(256B). Such policy and guidelines shall address and contain:

a. Licensed health personnel shall provide special health services under the auspices of the school. Duties of the licensed personnel include:

- (1) Participate as a member of the education team.
- (2) Provide the health assessment.
- (3) Plan, implement and evaluate the written individual health plan.
- (4) Plan, implement and evaluate special emergency health services.
- (5) Serve as liaison and encourage participation and communication with health service agencies and individuals providing health care.
- (6) Provide health consultation, counseling and instruction with the eligible individual, the individual’s parent and the staff in cooperation and conjunction with the prescriber.
- (7) Maintain a record of special health services. The documentation includes the eligible individual’s name, special health service, prescriber or person authorizing, date and time, signature and title of the person providing the special health service and any unusual circumstances in the provision of such services.

(8) Report unusual circumstances to the parent, school administration, and prescriber.

(9) Assign and delegate to, instruct, provide technical assistance and supervise qualified designated personnel.

(10) Update knowledge and skills to meet special health service needs.

b. Prior to the provision of special health services the following shall be on file:

(1) Written statement by the prescriber detailing the specific method and schedule of the special health service, when indicated.

(2) Written statement by the individual’s parent requesting the provision of the special health service.

(3) Written report of the preplanning staffing or meeting of the education team.

(4) Written individual health plan available in the health record and integrated into the IEP or IFSP.

c. Licensed health personnel, in collaboration with the education team, shall determine the special health services to be provided and the qualifications of individuals performing the special health services. The documented rationale shall include the following:

(1) Analysis and interpretation of the special health service needs, health status stability, complexity of the service, predictability of the service outcome and risk of improperly performed service.

(2) Determination that the special health service, task, procedure or function is part of the person’s job description.

(3) Determination of the assignment and delegation based on the individual’s needs.

(4) Review of the designated person’s competency.

(5) Determination of initial and ongoing level of supervision required to ensure quality services.

d. Licensed health personnel shall supervise the special health services, define the level of supervision and document the supervision.

e. Licensed health personnel shall instruct qualified designated personnel to deliver and perform special health services contained in the eligible individual health plan. Documentation of instruction and periodic updates shall be on file at school.

f. Parents shall provide the usual equipment, supplies and necessary maintenance for such. The equipment shall be stored in a secure area. The personnel responsible for the equipment shall be designated in the individual health plan.

281—41.97 Reserved.

281—41.98(256B,34CFR300) Transportation. Transportation of eligible individuals shall generally be provided as for other individuals, when appropriate. Specialized transportation of an eligible individual to and from a special education instructional service is a function of that service and, therefore, an appropriate expenditure of special education instructional funds generated through the weighting plan.

41.98(1) *Special arrangements.* Transportation of an eligible individual to and from a special education support service is a function of that service, shall be specified in the IEP or IFSP, and is an appropriate expenditure of funds generated for special education support services. When, because of an eligible individual's educational needs or because of the location of the program, the IEP team determines that unique transportation arrangements are required and the arrangements are specified in the IEP or IFSP, the resident LEA shall be required to provide one or more of the following transportation arrangements for instructional services and the AEA for support services:

a. Transportation from the eligible individual's residence to the location of the special education and back to this individual's residence, or child care placement for eligible individuals below the age of six.

b. Special assistance or adaptations in getting the eligible individual to and from and on and off the vehicle, en route to and from the special education.

c. Reimbursement of the actual costs of transportation when by mutual agreement the parents provide transportation for the eligible individual to and from the special education.

d. Agencies are not required to provide reimbursement to parents who elect to provide transportation in lieu of agency-provided transportation.

41.98(2) *Responsibility for transportation.*

a. The AEA shall provide the cost of transportation of eligible individuals to and from special education support services. The AEA shall provide the cost of transportation which is necessary for the provision of special education support services to nonpublic school eligible individuals if the cost of that transportation is in addition to the cost of transportation provided for special education instructional services.

b. When individuals enrolled in nonpublic schools are dually enrolled in public schools to receive special education instructional services, transportation provisions between nonpublic and public attendance centers will be the responsibility of the school district of residence.

c. Transportation of individuals, when required for educational diagnostic purposes, is a special education support service and, therefore, an appropriate expenditure of funds generated for special education support services.

41.98(3) *Purchase of transportation equipment.* When it is necessary for an LEA to purchase equipment to transport eligible individuals to special education instructional services, this equipment shall be purchased from the LEA's general fund. The direct purchase of transportation equipment is not an appropriate expenditure of special education instructional funds generated through the weighting plan. A written schedule of depreciation for this transportation equipment shall be developed by the LEA. An annual charge to special education instructional funds generated through the weighting plan for depreciation of the equipment shall be made and reported as a special education transportation cost in the LEA Certified Annual Report. Annual depreciation charges, except in unusual circumstances, shall be calculated by the LEA according to the directions provided with the Annual Transportation Report and adjusted to reflect the proportion that special education mileage is of the total annual mileage.

41.98(4) *Lease of transportation equipment.* An LEA may elect to lease equipment to transport eligible individuals to special education instructional services. Cost of the lease, or that portion of the lease attributable to special education transportation expense, shall be considered a special education transportation cost and reported in the LEA Certified Annual Report.

41.98(5) *Transportation equipment safety standards.* All transportation equipment, either purchased or leased by an LEA to transport eligible individuals to special education instructional services or provided by an AEA, must conform to the transportation equipment safety and construction standards contained in 281—Chapters 43 and 44.

281—41.99 Reserved.

281—41.100(256B,34CFR300) *Other services.* Other services provided by special education personnel, but which are not typically described on IEPs, include:

41.100(1) Provision of information, consultation and support to teachers, administrators, curriculum specialists, early childhood providers, special education personnel, other school personnel, and other service providers.

41.100(2) Supervision and training of paraprofessionals.

41.100(3) Continuing education for personnel providing or being prepared to provide special education.

41.100(4) Demonstration of special education procedures and techniques.

41.100(5) Curriculum development.

41.100(6) Modifying and designing special education materials.

41.100(7) Assessment, consultation, general education interventions, program planning, and referral to and coordination with community agencies and services.

41.100(8) Participation in parent conferences and in IEP or IFSP meetings.

281—41.101 Reserved.

DIVISION X PARENT PARTICIPATION

281—41.102(256B,34CFR300) *Parent participation.* Each agency shall take steps to ensure that one or both of the parents of an eligible individual are present at each IEP meeting or are afforded the opportunity to participate as described in rule 41.64(256B,34CFR300).

281—41.103(256B,34CFR300) *Consent.*

41.103(1) “*Consent*” means that:

a. The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent’s native language or other mode of communication;

b. The parent understands and agrees in writing to the carrying out of the activity for which the parent’s consent is sought, and the consent describes that activity and lists the records, if any, that will be released and to whom; and

c. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

41.103(2) Parental consent must be obtained before the agency conducts a full and individual evaluation and before the initial provision of special education and related services. Consent is voluntary and may be revoked up until the time the initial proposed action takes place. If a dispute arises after the individual is placed, the parents may request a hearing to review the placement decision. Any changes in a child’s special education program after the initial placement are not subject to the parental consent requirements prior to a preplacement evaluation but are subject to the prior notice requirements as described in division X, rule 41.104(256B,34CFR300) and the IEP requirements of division VIII.

281—41.104(256B,34CFR300) Written notice. Written notice must be given to the parents of an individual a reasonable time before the agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of an individual or the provision of FAPE to the individual. The notice is intended to inform parents of an agency's final decision regarding a proposed or refused action. Such notice must be given to parents before the agency implements a proposed action, but after the agency's decision has been made. Following receipt of the written notice a parent or an agency has the right to request an impartial due process hearing.

41.104(1) Notice content. The written notice shall include:

- a.* A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected.
- b.* A description of each evaluation procedure, test, record or report the agency uses as a basis for the proposal or refusal.
- c.* A description of any other factors that are relevant to the agency's proposal or refusal.
- d.* A full explanation of all the procedural safeguards available to the parents including:
 - (1) The definitions of "consent," "evaluation," and "personally identifiable."
 - (2) Opportunity to examine records.
 - (3) Independent educational evaluation.
 - (4) Written (prior) notice and parental consent.
 - (5) Content of written notice.
 - (6) Impartial due process hearing.
 - (7) Impartial administrative law judge.
 - (8) Hearing rights.
 - (9) Hearing decision and appeal.
 - (10) Civil action.
 - (11) Timelines and convenience of hearings and reviews.
 - (12) Individual's status during proceedings.
 - (13) Surrogate parents.
 - (14) Attorney's fees.
 - (15) Record access rights.
 - (16) Records of record access.
 - (17) Records on more than one individual.
 - (18) List of types and locations of information.
 - (19) Copying fees.
 - (20) Amendment of records at parent's request.
 - (21) Opportunity for a hearing on records.
 - (22) Result of hearing.

41.104(2) Notice requirements. The notice shall be:

- a.* Written in language understandable to the general public.
- b.* Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- c.* If the native language or other mode of communication of the parent is not a written language, the agency shall take steps to ensure:
 - (1) That the notice is translated orally or by other means to the parent in the parent's native language or other mode of communication.
 - (2) That the parent understands the content of the notice.
 - (3) That there is written evidence that the requirements in this rule have been met.

41.104(3) Implementation. The final decision of the agency for a proposed action indicated in the written notice requirements cannot be implemented for ten calendar days. The purpose is to give parents an opportunity to review the decision and request an impartial due process hearing if they disagree. If the written notice requirements are fulfilled at the IEP meeting, the ten-day waiting period should be documented on the IEP by the starting date of the new IEP exceeding the meeting date by ten days. If the parent chooses to waive the ten days, the starting date of implementation of the new IEP would be immediate with documentation and rationale for the waiver clearly stated.

281—41.105(256B,34CFR300) Complaints to the department. An individual or organization may file a signed written complaint that includes a statement that an agency has violated these rules, which include 41.84(2) “b”(3), and the facts on which the statement is based. The department shall review, investigate and act on any written complaint within 60 calendar days of the receipt of such complaint although the time limit can be extended if exceptional circumstances exist. Within 60 calendar days of the receipt of such complaint, the department may carry out an independent on-site investigation, if the department determines that such an investigation is necessary. The individual or organization filing the complaint shall be given the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint. After the relevant information is reviewed, an independent determination shall be made by the department as to whether the agency is violating these rules. The department shall issue a written decision to the individual or organization filing the complaint that addresses each allegation in the complaint and contains findings of fact and conclusions and the reasons for the department’s final decision. If needed, the department shall provide for negotiations, technical assistance activities or corrective action to achieve compliance. The individual or organization filing the complaint has a right to request the Secretary of the United States Department of Education to review the department’s final decision.

281—41.106(256B,34CFR300) Special education preappeal conference.

41.106(1) Procedures. The parent, the LEA or the AEA may request a special education preappeal conference on any decision relating to the identification, evaluation, educational placement, or the provision of a free appropriate education. Participation is voluntary.

a. A request for a special education preappeal conference shall be made in the form of a letter which identifies the student, LEA and AEA, sets forth the facts, the issues of concern, or the reasons for the conference. The letter shall be mailed to the department.

b. Within five working days of receipt of the request for the conference, the department shall contact all pertinent parties to determine whether participation is desired. A checklist shall be sent by the department to the LEA or AEA to receive information about the student.

c. A preappeal conference will be scheduled and held at a time and place reasonably convenient to all parties involved. Written notice will be sent to all parties by the department.

d. The LEA or the AEA shall submit the special education preappeal checklist to the department (with a copy to the parent) within ten working days after receiving the request.

e. The student’s complete school record shall be made available for review by the parent prior to the conference, if requested in writing at least ten calendar days before the preappeal.

f. The individual’s complete school record shall be available to the participants at the preappeal conference.

g. The preappeal conference will include at least two representatives of the department and will be chaired by the department or by a mediator provided by the department.

h. If an agreement is reached, a written summary of the preappeal agreement will be prepared by the department, or the assigned mediator, and disseminated to all parties involved within ten working days following the conference.

i. If agreement is not reached at the special education preappeal conference, all parties will be notified of the procedures to be followed in filing a formal special education appeal as described in division XI.

41.106(2) Assurances. The special education preappeal process shall in no way deny or delay a party's right to a full due process hearing if the party wishes to utilize the formal process. In addition, special education preappeal conference proceedings and offers of agreement during the conference shall not be entered as arguments or evidence in a hearing. However, the parties may stipulate to agreements reached in the special education preappeal conference.

41.106(3) Placement during proceedings. Unless the parties agree otherwise, the student involved in the preappeal must remain in the student's present educational placement during the pendency of the proceedings.

41.106(4) Dismissal. A request for dismissal may be made to the department at any time by the party initiating the preappeal.

281—41.107(256B,34CFR300) Right to a due process hearing. A parent or a public educational agency may initiate a hearing on any decision related to a proposal or refusal to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. The hearing shall be conducted by an impartial administrative law judge pursuant to division XI of these rules.

281—41.108(34CFR300) Attorney fees. Each public agency shall inform parents that in any action or proceeding involving procedural safeguards, courts may award parents reasonable attorneys' fees under 20 U.S.C. 1415(e)(4) as part of the costs to the parent or guardian of a child or youth with a disability who is a prevailing party.

281—41.109(256B,34CFR300) Independent educational evaluation.

41.109(1) Definitions. As used in this rule:

"*Independent educational evaluation*" means an evaluation conducted by a qualified examiner who is not employed by the agency responsible for the education of the individual in question.

"*Public expense*" means that the agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

41.109(2) General. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the agency. However, the agency may initiate a hearing under division XI to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

41.109(3) Locations of independent educational evaluations. Each agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

41.109(4) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation must be considered by the agency in any decision made with respect to the provision of FAPE to the individual, and may be presented as evidence at a hearing.

41.109(5) Administrative law judge. If an administrative law judge requests an independent educational evaluation as part of a hearing, the cost of the evaluation shall be at public expense.

41.109(6) Agency criteria. Whenever an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the agency uses when it initiates an evaluation. These criteria shall be set forth in AEA board policy.

281—41.110(256B,34CFR300) Surrogate parent procedures.

41.110(1) Definitions as used in this rule:

"*Eligible surrogate parents*" are persons who are at least 18 years of age, known to be reliable and have had or will receive training in the education of individuals with disabilities. A person selected as a surrogate has no interest that conflicts with the interest of the individual represented and has knowledge and skills that ensure adequate representation of the individual. A person assigned as a surrogate

may not be an employee of an agency that is involved in the education or care of the individual. A person who otherwise qualifies to be a surrogate parent shall not be an employee of the agency solely because the surrogate is paid by the agency to serve as a surrogate parent. Parents of other individuals with disabilities or other interested and knowledgeable persons may be appointed to serve as surrogate parents. Foster parent is deemed a person acting as the parent of an individual and in such situations surrogate parent appointment is not necessary, unless circumstances indicate otherwise. Group home directors and caseworkers may not be assigned as surrogate parents.

“Surrogate parent” means an individual who acts in place of a parent in protecting the rights of an individual in the educational decision-making process. A surrogate parent is appointed for an individual when no parent can be identified; when the agency, after reasonable efforts, cannot discover the whereabouts of a parent; or when the individual is a ward of the state.

41.110(2) Appointment.

a. A surrogate parent for special education shall be appointed whenever the AEA documents that no parent (as defined above) can be identified; cannot discover the whereabouts of a parent after reasonable efforts; or the individual is a ward of the state and is known to be or is suspected of being an individual with disabilities.

b. In appointing a surrogate parent, it shall be ensured that there is no conflict of interest regarding the surrogate parent’s responsibility to protect the special education rights of the individual; the surrogate parent is, or is willing to become, knowledgeable about the individual’s disability and educational needs; and the surrogate parent is informed of the rights and responsibilities of serving as a surrogate parent.

c. The AEA director shall select a surrogate parent for special education purposes. The director shall contact the department of human services regional administrator to ascertain whether the proposed surrogate parent has any conflict of interest. The director shall appoint the surrogate parent by letter. The letter must contain the individual’s name, age, educational placement and other information about the individual determined to be useful to the surrogate parent, and must specify the period of time for which the person shall serve. A copy of the letter shall be sent to the department.

41.110(3) Responsibilities. Confidential educational records may be reviewed by the surrogate parent who is acting as a parent as defined above. The surrogate parent may represent the individual in all matters relating to the identification, evaluation, and educational placement of the individual and the provision of FAPE to the individual.

41.110(4) Training.

a. Training shall be conducted as necessary by each AEA using a training procedure approved by the department, which includes rights and responsibilities of surrogate parent, sample forms used by LEAs and AEAs, specific needs of individuals with disabilities and resources for legal and instructional technical assistance.

b. The department shall provide continuing education and assistance to AEAs upon request.

41.110(5) Monitoring. The department shall provide assistance to, and shall monitor, surrogate parent programs.

281—41.111 Reserved.

DIVISION XI
SPECIAL EDUCATION APPEALS

281—41.112(17A,256B,290) Definitions. As used in this division:

“Administrative law judge” means an administrative law judge designated by the director of education from the list of approved administrative law judges to hear the presentation of evidence and oral arguments in the hearing. The administrative law judges are selected under authority granted by the board. Such authority provides for the contracting with qualified personnel to serve as administrative law judges who are not personally or professionally involved so as to conflict with objectivity and are not employees or board members of either state, intermediate or local education agencies involved in

the education or care of the individual. The department shall keep a list of the persons who serve as administrative law judges. The list shall include a statement of the qualifications of each of those persons.

“*Appellant*” means the party bringing a special education appeal to the department.

“*Appellee*” means the party in a matter against whom an appeal is taken.

“*Parties*” means the appellant, appellee and third parties named or admitted as a party.

281—41.113(17A,256B) Manner of appeal.

41.113(1) *Initiating a hearing.*

a. A parent may initiate a hearing when an educational public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the individual or the provision of FAPE to the individual.

b. Disagreements between a parent and a public agency regarding the availability of a program appropriate for the eligible individual, and the question of financial responsibility, are subject to the due process procedures of 34 CFR §§300.500-300.515.

c. A public agency may use the hearing procedures to determine if the individual may be evaluated or initially provided special education and related services without parental consent. If a public agency does so and the administrative law judge upholds the agency, the agency may evaluate or initially provide special education and related services to the individual without the parent’s consent.

d. The appropriate AEA serving the individual shall be deemed to be a party with the LEA whether or not specifically named by the parent or agency filing the appeal. In instances where the individual is served through a contract with another agency, the school district of residence of the individual shall be deemed a party.

41.113(2) *Conducting a hearing.* The hearing shall be conducted by the department.

41.113(3) *Appeal.* An appeal shall be made in writing which identifies the individual, LEA and AEA, and generally sets forth the facts, the error or errors complained of or the reasons for the appeal in a plain and concise manner.

41.113(4) *Notice.* The director of education or designee shall, within five working days after the receipt of the appeal, notify the proper school officials in writing of the appeal and the officials shall, within ten working days, file with the department complete educational records and proceedings related to the decision appeal.

41.113(5) *Free or low-cost legal services.* The department shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or the parent or the agency initiates a hearing.

41.113(6) *Written notice.* The director of education or designee shall provide notice in writing delivered by fax, personal service as in civil actions, or by certified mail, return receipt requested, to all parties at least ten calendar days prior to the hearing unless the ten-day period is waived by both parties. Such notice shall include the time and the place where the matter of appeal shall be heard. A copy of the appeal hearing rules shall be included with the notice.

41.113(7) *Mediation conference.* Parties shall be contacted by department personnel to ascertain whether they wish to participate in a mediation conference. The involved parties shall be notified that participation in this conference is voluntary and that such a conference in no way shall deny or delay a party’s right to a full due process hearing. Such a conference, if held, shall be scheduled at a time and place that is convenient to all involved persons. The mediation conference is designed to clarify the issues and, if possible, to resolve disagreements prior to a hearing. The discussions and offers of compromise at the mediation conference shall not be entered as arguments or evidence in a hearing. However, the parties may stipulate to agreements reached in mediation.

41.113(8) *Continuance.* A request for continuance may be made by any party to the designated administrative law judge. The administrative law judge may grant specific extensions of time beyond 45 calendar days after the receipt of a request for a hearing.

41.113(9) *Dismissal.* A request for dismissal may be made to the administrative law judge at any time by the party initiating the appeal. A request or motion for dismissal made by the appellee shall be granted upon a determination by the administrative law judge that any of the following circumstances apply:

- a. The appeal relates to an issue that does not reasonably fall under any of the appealable issues of identification, evaluation, placement, or the provision of a free appropriate public education.
- b. The issue(s) raised is moot.
- c. The individual is no longer a resident of the LEA or AEA against whom the appeal was filed.
- d. The relief sought by the appellant is beyond the scope and authority of the administrative law judge to provide.
- e. Circumstances are such that no case or controversy exists between the parties.

An appeal may be dismissed administratively when an appeal has been in continued status for more than one school year. Prior to an administrative dismissal, the administrative law judge shall notify the appellant at the last-known address and give the appellant an opportunity to give good cause as to why an extended continuance shall be granted. An administrative dismissal issued by the administrative law judge shall be without prejudice to the appellant.

41.113(10) *Time and place of hearing.* The hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and individual involved.

281—41.114(17A,256B) Participants in the hearing.

41.114(1) *Conducting hearing.* The hearing shall be conducted by the administrative law judge.

41.114(2) *Counsel.* Any party to a hearing has a right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of individuals with disabilities.

41.114(3) *Opportunity to be heard—appellant.* The appellant or representative shall have the opportunity to be heard.

41.114(4) *Opportunity to be heard—appellee.* The appellee or representative shall have the opportunity to be heard.

41.114(5) *Opportunity to be heard—director.* The director or designee shall have the opportunity to be heard.

41.114(6) *Opportunity to be heard—third party.* A person or representative who was neither the appellant nor appellee, but was a party in the original proceeding, may be heard at the discretion of the administrative law judge.

41.114(7) *Resource persons.* Representatives of the department may be present as resource persons and may be heard at the discretion of the administrative law judge.

41.114(8) *Presence of individual.* Parents involved in hearings must be given the right to have the individual who is the subject of the hearing present.

281—41.115(17A,256B) Convening the hearing.

41.115(1) *Announcements and inquiries by administrative law judge.* At the established time, the name and nature of the case are to be announced by the administrative law judge. Inquiries shall be made as to whether the respective parties or their representatives are present.

41.115(2) *Proceeding with the hearing.* When it is determined that parties or their representatives are present, or that absent parties have been properly notified, the appeal hearing may proceed. When any absent party has been properly notified, it shall be entered into the record. When notice to an absent party has been sent by certified mail, return receipt requested, the return receipt shall be placed in the record. If the notice was in another manner, sufficient details of the time and manner of notice shall be entered into the record. If it is not determined whether absent parties have been properly notified, the proceedings may be recessed at the discretion of the administrative law judge.

41.115(3) *Types of hearing.* The administrative law judge shall establish with the parties that the hearing shall be conducted as one of three types:

- a. A hearing based on the stipulated record.
- b. An evidentiary hearing.
- c. A mixed evidentiary and stipulated record hearing.

41.115(4) *Evidentiary hearing scheduled.* An evidentiary hearing shall be held unless both parties agree to a hearing based upon the stipulated record or a mixed evidentiary and stipulated record hearing.

41.115(5) *Educational record part of hearing.* The educational record submitted to the department by the educational agency shall, subject to timely objection by the parties, become part of the record of the hearing.

281—41.116(17A,256B) Stipulated record hearing.

41.116(1) *Record hearing is nonevidentiary.* A hearing based on stipulated record is nonevidentiary in nature. No witnesses shall be heard nor evidence received. The controversy shall be decided on the basis of the record certified by the proper official and the arguments presented on behalf of the respective parties. The parties shall be so reminded by the administrative law judge at the outset of the proceeding.

41.116(2) *Materials to illustrate an argument.* Materials such as charts and maps may be used to illustrate an argument, but may not be used as new evidence to prove a point in controversy.

41.116(3) *One spokesperson per party.* Unless the administrative law judge determines otherwise, each party shall have one spokesperson.

41.116(4) *Arguments and rebuttal.* The appellant shall present first argument. The appellee then presents second argument and rebuttal of the appellant's argument. A third party, at the discretion of the administrative law judge, may be allowed to make remarks. The appellant may then rebut the preceding arguments but may not introduce new arguments.

41.116(5) *Time to present argument.* Appellant and appellee shall have equal time to present their arguments and appellant's total time shall not be increased by the right of rebuttal. The time limit of argument shall be established by the administrative law judge.

41.116(6) *Written briefs.* Any party may submit written briefs. Written briefs by a person who is not a party may be accepted at the discretion of the administrative law judge. A brief shall provide legal authority for an argument, but shall not be considered as evidence. Copies of written briefs shall be delivered to all parties, and if desired each party may submit reply briefs at the conclusion of the hearing or at a mutually agreeable time. A final decision shall be reached and a copy of the decision shall be mailed to the parties not later than 45 calendar days after the receipt of the request for the hearing unless the administrative law judge granted an extension of time beyond the 45 calendar days. The time for filing briefs may extend the time for final decision.

41.116(7) *Open hearing.* Parents involved in hearings shall be given the right to open the hearing to the public.

281—41.117(17A,256B) Evidentiary hearing.

41.117(1) *Testimony and other evidence.* An evidentiary hearing provides for the testimony of witnesses, introduction of records, documents, exhibits or objects.

41.117(2) *Appellant statement.* The appellant may begin by giving a short opening statement of a general nature which may include the basis for the appeal, the type and nature of the evidence to be introduced and the conclusions which the appellant believes the evidence shall substantiate.

41.117(3) *Appellee statement.* The appellee may present an opening statement of a general nature and may discuss the type and nature of evidence to be introduced and the conclusion which the appellee believes the evidence shall substantiate.

41.117(4) *Third-party statement.* With the permission of the administrative law judge, a third party may make an opening statement of a general nature.

41.117(5) *Witness testimony and other evidence.* The appellant may then call witnesses and present other evidence.

41.117(6) *Witness under oath.* Each witness shall be administered an oath by the administrative law judge. The oath may be in the following form: "I do solemnly swear or affirm that the testimony or evidence which I am about to give in the proceeding now in hearing shall be the truth, the whole truth and nothing but the truth."

41.117(7) *Cross-examination by appellee.* The appellee may cross-examine all witnesses and may examine and question all other evidence.

41.117(8) *Witness testimony and other evidence.* Upon conclusion of the presentation of evidence by the appellant, the appellee may call witnesses and present other evidence. The appellant may cross-examine all witnesses and may examine and question all other evidence.

41.117(9) *Questions and other requests by administrative law judge.* The administrative law judge may address questions to each witness at the conclusion of questioning by the appellant and the appellee. The administrative law judge may request to hear other witnesses and receive other evidence not otherwise presented by the parties.

41.117(10) *Rebuttal witnesses and additional evidence.* At the conclusion of the initial presentation of evidence and at the discretion of the administrative law judge, either party may be permitted to present rebuttal witnesses and additional evidence of matters previously placed in evidence. No new matters of evidence may be raised during this period of rebuttal.

41.117(11) *Appellant final argument.* The appellant may make a final argument, not to exceed a length of time established by the administrative law judge, in which the evidence presented may be reviewed, the conclusions outlined which the appellant believes most logically follow from the evidence and a recommendation of action to the administrative law judge.

41.117(12) *Appellee final argument.* The appellee may make a final argument for a period of time not to exceed that granted to the appellant in which the evidence presented may be reviewed, the conclusions outlined which the appellee believes most logically follow from the evidence and a recommendation of action to the administrative law judge.

41.117(13) *Third-party final argument.* At the discretion of the administrative law judge, a third party directly involved in the original proceeding may make a final argument.

41.117(14) *Rebuttal of final argument.* At the discretion of the administrative law judge, either side may be given an opportunity to rebut the other's final argument. No new arguments may be raised during rebuttal.

41.117(15) *Written briefs.* Any party may submit written briefs. Written briefs by a person who is not a party may be accepted at the discretion of the administrative law judge. A brief shall provide legal authority for an argument, but shall not be considered as evidence. Copies of written briefs shall be delivered to all parties and, if desired, each party may submit reply briefs at the conclusion of the hearing or at a mutually agreeable time. A final decision shall be reached and a copy of the decision shall be mailed to the parties not later than 45 calendar days after the receipt of the request for the hearing unless the administrative law judge granted an extension of time beyond the 45 calendar days. The time for filing briefs may extend the time for final decision.

41.117(16) *Open hearing.* Parents involved in hearings must be given the right to open the hearing to the public.

281—41.118(17A,256B) Mixed evidentiary and stipulated record hearing.

41.118(1) *Written evidence of portions of record may be used.* A written presentation of the facts or portions of the certified record which are not contested by the parties may be placed into the hearing record by any party, unless there is timely objection by the other party. Such evidence cannot later be contested by the parties and no introduction of evidence contrary to that which has been stipulated may be allowed.

41.118(2) *Conducted as evidentiary hearing.* All oral arguments, testimony by witnesses and written briefs may refer to evidence contained in the material as any other evidentiary material entered at the hearing. The hearing is conducted as an evidentiary hearing.

281—41.119(17A,256B) Witnesses.

41.119(1) Subpoenas. The director of education shall have the power to issue (but not serve) subpoenas for witnesses, to compel the attendance of those thus served and the giving of evidence by them. The subpoenas shall be given to the requesting parties whose responsibility it is to serve to the designated witnesses. Requests for subpoenas may be denied or delayed if not submitted to the department at least five calendar days prior to the hearing date.

41.119(2) Attendance of witness compelled. Any party may compel by subpoena the attendance of witnesses, subject to limitations imposed by state law.

41.119(3) Cross-examination. Witnesses at the hearing or a person whose testimony has been submitted in written form, if available, shall be subject to cross-examination by any party necessary for a full and true disclosure of the facts.

281—41.120(17A,256B) Rules of evidence.

41.120(1) Receiving relevant evidence. Because the administrative law judge must decide each case fairly, based on the information presented, it is necessary to allow for the reception of all relevant evidence which shall contribute to an informed result. The ultimate test of admissibility is whether the offered evidence is reliable, probative and relevant.

41.120(2) Acceptable evidence. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The kind of evidence which reasonably prudent persons rely on may be accepted even if it would be inadmissible in a jury trial. The administrative law judge shall give effect to the rules of privilege recognized by law. Objections to evidence may be made and shall be noted in the record. When a hearing shall be expedited and the interests of the parties shall not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

41.120(3) Documentary evidence. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available. Upon objection, documentary evidence which is not disclosed to the other parties at least five calendar days before the hearing shall be prohibited.

41.120(4) Independent educational evaluation. If deemed necessary, the administrative law judge may order an independent educational evaluation, which shall be provided at no cost to the parent and which meets criteria prescribed by the department.

41.120(5) Opportunity to contest. The administrative law judge may take official notice of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the administrative law judge. Parties shall be notified at the earliest practicable time, either before or during the hearing or by reference in preliminary reports, and shall be afforded an opportunity to contest such facts before the decision is announced unless the administrative law judge determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

41.120(6) Administrative law judge may evaluate evidence. The administrative law judge's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

41.120(7) Decision. A decision shall be made upon consideration of the whole record or such portions that are supported by and in accord with reliable, probative and substantial evidence.

281—41.121(17A,256B) Communications.

41.121(1) Restrictions on communications—administrative law judge. The administrative law judge shall not communicate directly or indirectly in connection with any issue of fact or law in that contested case with any person or party except upon notice and opportunity for all parties to participate.

41.121(2) Restrictions on communications—parties. Parties or their representatives shall not communicate directly or indirectly in connection with any issue of fact or law with the administrative law judge except upon notice and opportunity for all parties to participate as are provided for by administrative rules. The recipient of any prohibited communication shall submit the communication, if written, or a summary of the communication, if oral, for inclusion in the record of the proceeding.

41.121(3) Sanctions. Any or all of the following sanctions may be imposed upon a party who violates the rules regarding ex parte communications: censure, suspension or revocation of the privilege to practice before the department, or the rendering of a decision against a party who violates the rules.

281—41.122(17A,256B) Record.

41.122(1) Open hearing. Parents involved in hearings shall be given the right to open the hearing to the public. The hearing shall be recorded by mechanized means or by certified court reporters. Oral proceedings in whole or in part may be transcribed at the request of any party, with the expense of the transcription charged to the requesting party. Any party to a hearing has the right to obtain, upon request, an electronic verbatim record of the hearing.

41.122(2) Transcripts. All recording or notes by certified court reporters of oral proceedings or the transcripts thereof shall be maintained and preserved by the department for at least five years from the date of decision.

41.122(3) Hearing record. The record of a hearing shall be maintained and preserved by the department for at least five years from the date of the decision. The record under this division shall include:

- a. All pleadings, motions and intermediate rulings.
- b. All evidence received or considered and all other submissions.
- c. A statement of matters officially noted.
- d. All questions and offers of proof, objections and rulings thereof.
- e. All proposed findings and exceptions.
- f. Any decision, opinion or report by the administrative law judge presented at the hearing.

281—41.123(17A,256B) Decision and review.

41.123(1) Decision. The administrative law judge, after due consideration of the record and the arguments presented, shall make a decision on the appeal.

41.123(2) Basis of decision. The decision shall be based on the laws of the United States and the state of Iowa and the rules and policies of the department and shall be in the best interest of the education of the individual.

41.123(3) Time of decision. The administrative law judge's decision shall be reached and mailed to the parties within 45 calendar days after the department receives the original request for a hearing, unless a continuance has been granted by the administrative law judge for a good cause.

41.123(4) Impartial decision maker. No individual who participates in the making of any decision shall have advocated in connection with the hearing, the specific controversy underlying the case or other pending factually related matters. Nor shall any individual who participates in the making of any proposed decision be subject to the authority, direction or discretion of any person who has advocated in connection with the hearing, the specific controversy underlying the hearing or a pending related matter involving the same parties.

281—41.124(17A,256B) Finality of decision.

41.124(1) Decision final. The decision of the administrative law judge is final. The date of postmark of the decision is the date used to compute time for purposes of appeal.

41.124(2) Civil action. Any party who is aggrieved by the findings and decision can bring civil action. A party initiating civil action in federal court shall provide an informational copy of the petition or complaint to the department within 14 days of filing the action.

41.124(3) Department dissemination. The department, after deleting any personally identifiable information, shall transmit those findings and decisions to the state advisory panel and shall make those findings and decisions available to the public.

281—41.125(17A,256B) Individual's status during proceedings.

41.125(1) *Placement during proceedings.* During the pendency of any administrative or judicial proceeding regarding a complaint, unless the agency and the parents of the individual agree otherwise, the individual involved in the complaint must remain in the present educational placement. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with individuals who are endangering themselves or others.

41.125(2) *Placement during initial admission hearing.* If the complaint involves an application for initial admission to public school, the individual, with the consent of the parents, shall be placed in the public school program until the completion of all the proceedings.

281—41.126 and 41.127 Reserved.

DIVISION XII
FINANCE

281—41.128(256B,282) Contractual agreements. Any special education instructional program not provided directly by an LEA or any special education support service not provided by an AEA can only be provided through a contractual agreement. The board shall approve contractual agreements for AEA-operated special education instructional programs and contractual agreements permitting special education support services to be provided by agencies other than the AEA.

281—41.129(256B) Research and demonstration projects and models for special education program development. Applications for aid, whether provided directly from state or from federal funds, for special education research and demonstration projects and models for program development shall be submitted to the department.

281—41.130(256B,273) Additional special education. Additional special education made available through the provisions of Iowa Code section 273.3 shall be furnished in a manner consistent with these rules.

281—41.131(256B,273,282) Extended year special education. Approved extended year programs for special education support services, when provided by the AEA for eligible individuals, shall be funded through procedures as provided for special education support services. Approved extended year instructional programs shall be funded through procedures as provided for special education instructional programs.

281—41.132(256B,282,34CFR300) Program costs.

41.132(1) *Nonresident individual.* The program costs charged by an LEA or an AEA for an instructional program for a nonresident eligible individual shall be the actual costs incurred in providing that program.

41.132(2) *Contracted special education.* An AEA or LEA may make provisions for resident eligible individuals through contracts with public or private agencies which provide appropriate and approved special education. The program costs charged by or paid to a public or private agency for special education instructional programs shall be the actual costs incurred in providing that program.

41.132(3) *LEA responsibility.* The resident LEA shall be liable only for instructional costs incurred by an agency for those individuals certified as entitled in accord with these rules unless required by 34 CFR §300.302, July 1, 1994.

41.132(4) *Support service funds.* Support service funds may not be utilized to supplement any special education programs authorized to use special education instructional funds generated through the weighting plan.

41.132(5) *Responsibility for special education for children living in a foster care facility.* For eligible individuals who are living in a licensed child foster care facility as defined in Iowa Code section 237.1 or in a facility as defined in Iowa Code section 125.2, the LEA in which the facility is located must provide special education if the facility does not maintain a school. The costs of the special education, however, shall be paid by the school district of residence of the eligible individual. If the school district of residence of the eligible individual cannot be determined, and this individual is not included in the weighted enrollment of any LEA in the state, the LEA in which the facility is located may certify the costs to the director of education by August 1 of each year for the preceding fiscal year. Payment shall be made from the general fund of the state.

41.132(6) *Responsibility for special education for individuals placed by court.* For eligible individuals placed by the district court, and for whom parental rights have been terminated by the district court, the LEA in which the facility or home is located must provide special education. Costs shall be certified to the director of education by August 1 of each year for the preceding fiscal year by the director of the AEA in which this individual has been placed. Payment shall be made from the general fund of the state.

41.132(7) *Proper use of special education instructional and support service funds.* Special education instructional funds generated through the weighting plan may be utilized to provide special education instructional services both in state and out of state with the exceptions of itinerant hospital services or home services, itinerant instructional services and special education consultant services which shall utilize special education support service funds for both in-state and out-of-state placements.

41.132(8) *Funding of ECSE instructional options.* Eligible individuals below the age of six may be designated as full-time or part-time students depending on the needs of the child. Funding shall be based on individual needs as determined by the IEP team. Special education instructional funds generated through the weighting plan can be used to pay tuition, transportation, and other necessary special education costs, but shall not be used to provide child care.

a. Full-time ECSE instructional programming shall include 20 hours or more instruction per week. The total hours of participation in special education and general education, such as kindergarten or special education tuitioned preschool placements, may be combined to constitute a full-time program.

b. Part-time ECSE instructional programming shall include up to 20 hours of instruction per week. The total hours of participation in special education and general education, such as kindergarten or special education tuitioned preschool placements, may be combined to constitute a part-time program.

41.132(9) *Funding for instructional services.* When an LEA board approves a delivery system for instructional services as described in subrule 41.84(2), the director, in accord with Iowa Code sections 256B.9 and 273.5, will assign the appropriate special education weighting to each eligible individual by designating a level of service. The level of service refers to the relationship between the general education program and specially designed instruction for an eligible individual. The level of service is determined based on an eligible individual's educational need and independent of the environment in which the specially designed instruction is provided. One of three levels of service shall be assigned by the director:

a. Level I. A level of service that provides specially designed instruction for a limited portion or part of the educational program. A majority of the general education program is appropriate. This level of service includes modifications and adaptations to the general education program. (Reference Iowa Code section 256B.9(1) "b")

b. Level II. A level of service that provides specially designed instruction for a majority of the educational program. This level of service includes substantial modifications, adaptations, and special education accommodations to the general education program. (Reference Iowa Code section 256B.9(1) "c")

c. *Level III.* A level of service that provides specially designed instruction for most or all of the educational program. This level of service requires extensive redesign of curriculum and substantial modification of instructional techniques, strategies and materials. (Reference Iowa Code section 256B.9(1)“d”)

281—41.133(256B,282) Audit. The department reserves the right to audit the records of any agency providing special education for eligible individuals and utilizing funds generated under Iowa Code chapters 256B, 273 and 282.

281—41.134(256B,282,34CFR300) Evaluations.

41.134(1) *Educational or medical evaluation.* If an educational or medical evaluation is requested by the AEA, the cost of the evaluation including travel expenses shall be at no cost to the parent and shall be paid by the AEA.

41.134(2) *Independent educational evaluation—administrative law judge.* If an independent educational evaluation is requested by an administrative law judge, the cost of the independent educational evaluation including travel expenses shall be at no cost to the parent and shall be paid by the department.

41.134(3) *Independent educational evaluation—parent.* When parent has the right to an independent educational evaluation at public expense, rule 41.109(256B,34CFR 300), the cost of the independent educational evaluation including travel expenses shall be at no cost to the parent and shall be paid by the AEA.

41.134(4) *AEA policy and procedures.* The AEA shall establish policy and procedures for paying costs of an independent educational evaluation authorized under 34 CFR §300.503, July 1, 1994.

281—41.135(256B,273,282) Sanctions.

41.135(1) *Suspension of financial aid.* Any financial aid provided to an agency in support of special education may be suspended in whole or in part if the agency is found to be in noncompliance with any of the provisions of applicable statutes or rules. Suspension of financial aid would be only for the specific special education not meeting compliance requirements.

41.135(2) *Noncompliance.* When it has been determined that an area of noncompliance exists, the department shall notify the involved agency in writing of the violation, the required corrective action with timelines, appeal rights and the financial aid to be suspended if corrective action does not occur. If corrective action within the prescribed time limit does not occur, the department shall amend its certification to the director of the department of management so that the financial aid in question will be subtracted from funds available to the agency in the next scheduled payment period.

281—41.136 and 41.137 Reserved.

DIVISION XIII
STATE PLAN

281—41.138(256,256B,273,281) State plan of education for all individuals with disabilities. In accord with 20 U.S.C. §1413 and 34 CFR §300.110, July 1, 1994, the state must submit a state plan to the Secretary of Education.

41.138(1) *Plan contents and process.* The state plan shall meet the requirements of 34 CFR §§300.121 through 300.154 and §§300.280 through 300.284, July 1, 1994.

41.138(2) *Applicability of final approved plan.* The provisions of the state plan are applicable to, shall be adopted by and implemented by all political subdivisions of the state that are involved in and have responsibility for the education of eligible individuals. These would include the department, LEAs, AEAs, and other state-operated special education programs as detailed in rule 41.1 (256B,34CFR300).

281—41.139 and 41.140 Reserved.

DIVISION XIV
MONITORING OF COMPLIANCE

281—41.141(256B,442) Audit. The department reserves the right to audit the records of any agency providing special education for eligible individuals and utilizing funds generated under Iowa Code chapters 256B and 273.

281—41.142(256B,273,34CFR300) Compliance with federal and Iowa Codes. Each agency shall adhere to the provision of, and implementing regulations and rules to 20 U.S.C. §§1400 et seq., applicable portions of 29 U.S.C. §794 pertaining to eligible individuals and Title 42 U.S.C. §§2116 et seq., and Iowa Code chapters 256B and 273.

281—41.143(34CFR300) Monitoring.

41.143(1) The agency's adherence to federal and state code shall be monitored on a regular basis by the department in accord with 20 U.S.C. §§1232 et seq. The department shall conduct monitoring activities based on predetermined and disseminated standards and procedures. Each agency shall provide the department with reports, records and access to programs and personnel needed to conduct monitoring activities.

41.143(2) Copies of applicable standards shall be disseminated to each private school and facility to which a public agency has referred or placed a child with a disability.

41.143(3) An opportunity shall be provided for those private schools and facilities to participate in the development and revision of standards that apply to them.

281—41.144(256B,273,282) Sanctions. When it has been determined that an area of noncompliance exists, the department shall notify the involved agency in writing of the violation and the required corrective action with timelines. If the corrective action within the prescribed timelines does not occur, the department shall implement sanctions as described in 41.135(256B,273,282).

These rules are intended to implement Iowa Code chapters 256B and 273 and 34 CFR Part 300.

[Filed 12/13/66; amended 10/31/74]

[Filed 5/23/77, Notice 3/23/77—published 6/15/77, effective 7/20/77]

[Filed 7/28/81, Notice 4/29/81—published 8/19/81, effective 9/23/81]

[Filed 10/7/83, Notice 8/31/83—published 10/26/83, effective 11/30/83]

[Filed emergency 8/10/84—published 8/29/84, effective 8/10/84]

[Filed 3/4/85, Notice 10/10/84—published 3/27/85, effective 6/1/85*]

[Filed emergency 7/11/85—published 7/31/85, effective 7/11/85]

[Filed 7/15/88, Notice 6/1/88—published 8/10/88, effective 9/14/88]

[Filed 8/19/88, Notice 6/29/88—published 9/7/88, effective 10/12/88]

[Filed 4/13/90, Notice 2/7/90—published 5/2/90, effective 6/6/90]

[Filed emergency 9/14/90—published 10/3/90, effective 9/14/90]

[Filed 6/5/92, Notice 2/5/92—published 6/24/92, effective 7/29/92]

[Filed 6/11/93, Notice 3/31/93—published 7/7/93, effective 8/11/93**]

[Filed 5/12/95, Notice 3/29/95—published 6/7/95, effective 7/12/95]

[Filed 10/11/96, Notice 8/28/96—published 11/6/96, effective 12/11/96]

CHAPTER 42

Reserved

*Effective date of Chapter 12 delayed 70 days by the Administrative Rules Review Committee. Delay lifted by committee on 7/8/85.

**Effective date of 41.2(3); 41.3(256B), definitions of "Autism," "Head injury," "Transition services," "Behaviorally disordered," paragraph "1," "Special education support programs and services"; 41.4(1); 41.18(2)"d"; 41.33(4); 41.33(6) delayed 70 days by the Administrative Rules Review Committee at its meeting held August 3, 1993; delay lifted by this Committee on 9/15/93.